INDEX—Continued

PAGE

Motion of Defendant, etc.—(Continued):
Evidence for the Government—(Continued):
Exhibit "D-47"—Phtostat of Certificate of Service awarded to Clinton E. Jencks, dated 10/5/45 1041
Exhibit "D-47-A"—Photostat of Military Record and Report of Separation, Certificate of Service, Clinton E. Jencks 1042
Exhibit "D-48"—Photostat of Letter, signed J. F. Artchee, dated 1/14/54 1045
Exhibit "D-49"—Photostat of Letter, M. H. Ross to Marshall W. Amis, dated 1/19/54 1046
Exhibit "D-50"—Photostat of Letter, Public Housing Administration to M. H. Ross, dated 1/19/54 1047
Court's Instructions to the Jury 1048
Colloquy between Court and Counsel 1050
Motions of Defendant for Mistrial and Ruling thereon 1051
Defendant's Requested Charges submitted to the Court before the Court charged the Jury, Ruling and exception of Defendant thereto 1051
Charge of the Court 1052
Exception of Defendant to Charge of the Court, Overruled 1066
Further Charge of the Court 1069
Oral Argument of Government Counsel, Francis C. Broaddus 1071
Oral Argument of Government Counsel, Hovery Williams 1099

INDEX—Continued

	PAGE
Defendant's Requested Charges and Ruling thereon	1117
Verdict of the Jury	1126
Judgment, Sentence and Order of Commitment, entered 1/21/54	1127
Motion of Defendant for New Trial	1129
Application of Defendant for permission to file an Amended Motion for New Trial and to fix the time within which same may be filed	1131
Order entered 1/26/54 Granting permission to file Amended Motion for New Trial and fixing the time within same may be filed	1132
Amended Motion of Defendant for New Trial and in Arrest of Judgment	1133
Order Overruling Motion for New Trial and in Arrest of Judgment	1145
Notice of Appeal	1145
Order entered 6/29/54 fixing Amount of Bail Bond	1147
Appeal Bond	1147
Bail Bond	1149
Motion and Order extending time to file Record in Appellate Court	1151-1152
Appellant's Designation of Contents of Record on Appeal	1152
Appellee's Designation of Contents of Record on Appeal	1156
Testimony of Lawrence E. Stevens, Jury Commissioner, Re Motion to Dismiss Indictment	1157
Defense Closing Argument by Mr. John T. McTernan Only	1165
Clerk's Certificate	1190

CAPTION.

BE IT REMEMBERED, that at a regular term of the United States District Court in and for the Western District of Texas, The Honorable R. E. Thomason, presiding, and holding its sessions at El Paso, Texas, which term began on the 5th day of October, A. D. 1953, and continued in session to, and included, the 11th day of January, 1954, there came on to be heard and determined, among other causes pending on the docket, the following cause, to-wit:

No. 54013 Criminal.

UNITED STATES OF AMERICA,

versus

CLINTON E. JENCKS.

A transcript of the proceedings follows:

INDICTMENT.

(Filed April 20, 1953.)

In the District Court of the United States for the Western District of Texas, El Paso Division.

No. 54013—Criminal

(18 U. S. C., Sec, 1001)

United States of America,

vs.

Clinton E. Jencks.

The Grand Jury Charges:

First Count.

That on or about the 28th day of April, 1950, in the Western District of Texas, Clinton E. Jencks, the Defendant herein, in a matter within the jurisdiction of the National Labor Relations Board, an agency of the United States, did unlawfully and wilfully make, use and cause to be made and used and file and cause to be filed with the National Labor Relations Board a false writing and document namely an "Affidavit of Non-Communist Union Officer" (Form NLRB—1081) knowing the same to contain a false fictitious and fraudulent statement and representation to wit: that he was not a member of the Communist Party, whereas the said Clinton E. Jencks then and there well knew he was a member of the Communist Party.

In violation of Section 1001, Title 18, United States Code.

The Grand Jury further charges:

Second Count.

That on or about the 28th day of April, 1950, in the Western District of Texas, Clinton E. Jencks, the Defendant herein, in a matter within the jurisdiction of the National Labor Relations Board, an agency of the United States, did unlawfully and wilfully make, use and cause to be made and used and filed and caused to be filed with the National Labor Relations Board a false writing and document namely an "Affidavit of Non-Communist Union Officer" (Form NLRB—1081) knowing the same to contain a false fictitious and fraudulent statement and representation to wit: that he was not affiliated with the

Communist Party, whereas the said Clinton E. Jencks then and there well knew he was affiliated with the Communist Party.

In violation of Section 1001, Title 18, United States Code.

A True Bill.
(S.) F. F. BARNES,
Foreman of the Grand Jury.

MOTION TO DISMISS INDICTMENT—ILLEGALLY AND UNCONSTITUTIONALLY CONSTITUTED GRAND JURY.

(Filed September 28, 1953.)

To The Curt:

Comes now the defendant and moves to dismiss the indictment herein for the reason that the ground jury which found and presented the indictment was composed of grand jurors drawn from a jury box which did not contain the names of any persons of the female sex; that the Jury Commissioner and the Clerk of this Court did, for purposes of selecting said grand jury, intentionally, systematically and entirely exclude all persons of the female sex in their selection of names to be placed in said jury box; that this exclusion of such persons was effected solely on account of their sex; that only the names of persons of the male sex were placed in said jury box, for purposes of selecting said grand jury, and that only from said names of persons of the male sex were the names of the grand jurors on said grand jury selected; that the practices of the Jury Commissioner and

the Clerk of this Court as herein described have been observed and effected continuously for at least thirty years last past with the result that the name of no person of the female sex has during said period of time been placed in a jury box or selected for grand jury service; that by virtue of the foregoing, neither the grand jury which found and presented the indictment herein, nor the group of names placed in the jury box from which the names of the persons constituting said grand jury were drawn was a cross section of the community of this District or truly representative of it; that by virtue of the foregoing, the indictment herein was not found and presented by a fair and impartial grand jury, contrary to the Fifth Amendment to the Constitution of the United States and is void and of no effect, and to hold defendant and to proceed to trial upon it would deprive defendant of due process of law and equal protection of the laws contrary to said Fifth Amendment; that to the extent the aforesaid practices of the Jury Commissioner and the Clerk of this Court are permitted or required by the provisions of Title 28 United States Code, Section 1861, those provisions are unconstitutional and void in that they deprive defendant of the scrutiny of a fair and impartial grand jury and of due process of law and equal protection of the laws, all contrary to the Fifth Amendment to the Constitution of the United States.

This motion is based upon the affidavit of E. B. Elfers and the memorandum of points and authorities annexed hereto and upon all the papers, records and files in this action.

Respectfully submitted,
JOHN T. McTERNAN,

Los Angeles, California.
(S.) E. B. ELFERS,
(E. B. Elfers),
Attorneys for Defendant.

615 Caples Building,
El Paso, Texas.

MEMORANDUM OF POINTS AND AUTHORITIES.

1. The intentional and systematic exclusion of women from the lists or boxes or panels from which the grand jury or trial jury is drawn renders the jury fatally unrepresentative of the community in the same manner as the exclusion of an economic or racial group.

Ballard v. United States, 329 US 187, 193-194; 91 L. ed 181, 186

Thiel v. Southern Pacific Co., 328 US 217; 90 L.ed 1181

Smith v. Texas, 311 US 128; 85 L.ed 84

2. Systematic exclusion of women from grand juries contravenes our basic concepts of a democratic society

and representative government; it results in a purposeful denial of detachment and impartiality in the grand jury that undermines the meaning of "grand jury" as used in the Fifth Amendment and deprives the accused of due process of law and equal protection of the laws.

Ballard v. United States, supra

United States v. Roemig, (DC ND, Ia.) 52 F. Supp. 857, 862

Compare: Glasser v. United States, 315 US 60; 86 L.ed 680

3. The Congress, being without power to exclude women from federal juries, may not accomplish that result by reference to a state law making such exclusion.

Thiel v. Southern Pacific Co., 328 U. S. 217, 221; 90 L.ed 1181, 1185

Kie v. United States, (CC, Ore.) 27 Fed. 351

4. The statute creating qualifications for federal jurors (28 USC Section 1861) was intended to establish uniform standards of qualifications for jurors in Federal Courts instead of making qualifications depend upon State laws. To interpret subdivision four of that section to disqualify women in this District would defeat the statutory aim of uniformity by disqualifying, in this District and all others situated in States having statutes similar to the Texas statute, at least one half the population. Such an absurd contradiction of purpose cannot be attributed to the Congress.

28 USCA Section 1861, Revisers Note

Report of the Judicial Conference of Senior

Circuit Judges, Oct. 1946 (Gov't Printing Office, Wash., D. C., 1946)—page 21

S. 1245, 79th Congress

5. In purposing the establishment of uniform standards for qualifications of jurors in Federal Courts "in accord with proposed legislation recommended by the Judicial Conference of the United States", the Congress specifically intended to abolish all disqualifications of women. The recommendations of the Judicial Conference as early as 1942 declared that "women as a group are capable of acting as jurors and should irrespective of state law be called for service in the Federal Courts."

Report of the Judicial Conference of Senior Circuit Judges, 1942—Report of Special Committee—page 23

The legislation proposed by the Judicial Conference in the two Congresses preceding that which enacted 28 USC Section 1861 was purposed to permit women to serve as jurors in all Federal Courts.

S. 1623, 78th Congress

S. 1245, 79th Congress

42 Mich, L. Rev. 831, 852, 853—Jury Selection Analyzed, Blume

33 ABA Law Journ. 113, 114—Present Status of Women as to Jury Service, Fisher

6. The exclusion of women is wholly arbitrary and without reasonable basis.

2 Stanford L. Rev. 691, 724-726

2 Ore. L. Rev. 30, 39-42

21 Tenn. L. Rev. 427

7 Improper constitution of the grand jury may be raised by motion to dismiss the indictment.

Ballard v. United States, supra

Glasser v. United States, supra.

Respectfully submitted,
JOHN T. McTERNAN,

Los Angeles, California.

(S.) E. B. ELFERS,
(E. B. Elfers),
Attorneys for Defendant.

615 Caples Building,
El Paso, Texas.

AFFIDAVIT OF E. B. ELFERS.

Before Me, the undersigned authority, a Notary Public in and for El Paso County, Texas, on this day personally appeared E. B. Elfers, who being by me first duly sworn, upon his oath deposes and says:

My name is E. B. Elfers, and I reside in El Paso, El Paso County, Texas, where I have, as a duly licensed attorney, been actively engaged for the past forty-five years in the practice of law in all Courts of the State of Texas, and in the United States Court for the Western District of Texas.

As a practicing attorney, I have become and am familiar with the practice and procedure pursued by the Jury Commissioner for the El Paso Division of the United States District Court for the Western District of Texas, and the Clerk and his deputies in that Court, in selecting the names of persons available for jury service, and placing such names in the jury box from which the names of all persons serving as grand and petit jurors in that Court have been drawn. The practice of using a jury box to hold the names of such jurors has been followed for the past thirty years. During that period, from observation of the persons serving as grand and petit jurors in that Court, and from conversations from time to time with J. N. Phillips, Chief Deputy Clerk, recently deceased, and Laurence E. Stevens, Jury Commissioner, I have become and am familiar with the practice and procedure which has at all times during that period been followed by the Clerk and Jury Commissioner in selecting the names of persons whose names are placed in the jury box as available for grand and petit jury service in that Court. I have learned that the number

of names has varied from year to year, the practice being to have not less than 900 names in the box, and that there has never been more than approximately 1100 names in the box. In selecting names and placing them in the jury box, only the names of men have been selected, the Jury Commissioner and the Clerk, or his deputies, having at all times purposely and systematically excluded the names of women solely because of their sex, the Jury Commissioner and Clerk deeming such exclusion to be required by virtue of the provisions of Section 1861, Article 28, United States Code, Article 3 of the Constitution of the State of Texas, and the civil and criminal statutes of the State of Texas enacted pursuant to the constitutional provisions.

I know and can state that for at least thirty years last past the jury box used at the El Paso Division of the United States District Court for the Western District of Texas, and from which the names of all persons serving as grand and petit jurors in that Court have been drawn, has not contained the name of a single woman available for grand or petit jury service, and that during such period no woman has been selected or drawn for grand or petit jury service in that Court, and I know that the indictment returned against the defendant, Clinton E. Jencks, was found and presented by a grand jury drawn from the jury box above described, and that no women served on such grand jury.

(S.) E. B. ELFERS,
(E. B. Elfers.)

Subscribed And Sworn to before me, the undersigned authority, by E. B. Elfers this 28th day of September, 1953.

(S.) BEATRICE N. GOSSETT,
Notary Public in and for El Paso County, Texas.

(Seal)

MOTION TO REQUIRE UNITED STATES ATTORNEY TO FURNISH LIST OF WITNESSES.

(Filed September 18, 1953.)

To The Court:

Clinton E. Jencks, defendant in the above styled and numbered cause, moves the Court for an order requiring the United States Attorney for the Western District of Texas to furnish this defendant and his attorneys of record a written list of the names and addresses of all witnesses whom such attorney will call and use as witnesses for the Government upon the trial of the above styled and numbered cause.

In support of and as grounds for such motion, defendant shows to the Court that prior to the return of the indictment herein, no complaint nor charges of any character had been filed against him, upon which he could demand a hearing and thereby learn who the witnesses were by whose testimony the Government would undertake to make proof of any unlawful acts committed by this defendant. Defendant further shows that if this Court has jurisdiction, the same can be established only by the fact that an affidavit executed by this defendant in another state was carried by United States mail

to a point within the territorial jurisdiction of this Court, and that the gravamen of the offense, the alleged falsity of the statements made in such affidavit, will necessarily be established by witnesses from states other than the State of Texas, and whose places of residence are at a considerable distance from El Paso, Texas. Defendant says that unless he can have the names and addresses of the witnesses by whom the Government proposes to make proof of the falsity of the statements contained in the affidavit described in the indictment, he cannot properly prepare his defense in this cause. This defendant says that he stands charged with a serious offense as against which he should be afforded the right and full opportunity of preparing his defense thereto. That no possible injury can result to the prosecution from granting the relief herein prayed for, and that a denial of such relief will force this defendant to trial with no opportunity to properly prepare his defense in this cause.

Defendant prays that his motion be granted, and that the order granting such motion require the United States Attorney to furnish the list requested within ten days after such order, and in no event later than thirty days before the date which has been set for the trial of this cause.

Respectfully submitted,
JOHN T. McTERNAN,

Los Angeles, California.
(S.) E. B. ELFERS,
Attorneys for Defendant.

615 Caples Building,
El Paso, Texas.

MOTION FOR ISSUANCE OF A PRE-TRIAL SUBPOENA—RULE 17 (c)

(Filed September 18, 1953.)

To The Court:

The defendant, Clinton E. Jencks, moves for the issuance by a judge of this Court of a subpoena directed to the United States Attorney for the Western District of Texas commanding him within ten days of the date of service of said subpoena, and in no event less than thirty days before the trial of this cause, to produce for the inspection of and copying by defendant or his counsel all books, papers, documents and objects (except memoranda prepared by government counsel, and documents or papers solicited by or volunteered to government counsel which consist of narrative statements of persons or memoranda of interviews), obtained by government counsel, in any manner other than by seizure or process, (1) in the course of the investigation by the grand jury which returned the indictment herein, and (2) in the course of the government's preparation for trial of this cause, and if such books, papers, documents or objects (a) have been presented to the Grand Jury, or (b) are to be offered as evidence upon the trial of the defendant under the indictment, or (c) prove or tend to prove any allegation or charge in the indictment or to disprove any such allegation or charge.

Respectfully submitted,

JOHN T. McTERNAN,

Los Angeles, California.

(S.) E. B. ELFERS,

(E. B. Elfers),

Attorneys for Defendant.

615 Caples Building,
El Paso, Texas.

VOLUME 1.

INDEX

	PAGE
Caption	1
Indictment	1
Motion of Defendant to dismiss Indictment—Illegally and unconstitutionally Constituted Grand Jury	3
Memorandum of Points and Authorities	5
Affidavit of E. B. Elfers, dated 9/28/53	9
Motion of Defendant to require United States Attorney to furnish List of Winesses	11
Motion of Defendant for Issuance of a Pre-Trial Sub-Poenaa—Rule 17 (c)	13
Motion of Defendant to Compel Election	14
Motion of Defendant for Bill of Particulars	15
Motion of Defendant to Dismiss Indictment	17
Order Overruling Motion of Defendant to dismiss Indictment	23
Order Overruling Motion of Defendant to require United States Attorney to furnish list of Witnesses	24
Order Overruling Motion of Defendant for Issuance of a Pre-Trial Subpoena—Rule 17 (c)	25
Order Overruling Motion of Defendant to Compel Election	25
Order Overruling Motion of Defendant to dismiss Indictment—Illegally and unconstitutionally Constituted Grand Jury	26
Order Overruling Motion of Defendant for Bill of Particulars	27
Subpoena Duces Tecum directed to Harold L. Hudson, and Return on Service thereon	28
Subpoena Duces Tecum directed to U. S. Attorney, et al., and Return on Service thereon	30

INDEX—Continued

PAGE

Joint Stipulation of Counsel, entered 11/19/53 relative to Subpoena Duces Tecum, etc. 34
Motion of Defendant to reconsider Ruling and Order denying Motion for Bill of Particulars 35
Memorandum of Points and Authorities in Support of Motion for Reconsideration of Ruling and Order Denying Bill of Particulars 36
Motion of Defendant for Reconsideration of Denial of Motion to Dismiss 39
Memorandum of Points and Authorities in Support of Motion 40
Notice of Challenge to Array and Motion to Quash and Dismiss Jury List, Array and Panel 45
Memorandum of Points and Authorities 47
Affidavit of E. B. Elfers, dated 1/8/54 49
Motion of Defendant for Continuance or, in the Alternative, Change of Venue 52
Exhibit "A"—Photostat of Newspaper Article of El Paso Herald-Post, November 25, 1953—Final Edition 58
Exhibit "B"—Photostat of Newspaper Article of The El Paso Times, November 26, 1953 59
Exhibit "C"—Photostat of Newspaper Article of The El Paso Times, November 28, 1953 60
Exhibit "D"—Photostat of Newspaper Article of El Paso Herald-Post, November 28, 1953—Home Edition 61
Exhibit "E"—Photostat of Newspaper Article of El Paso Herald-Post, November 30, 1953—Home Edition 62
Exhibit "F"—Photostat of Newspaper Article of El Paso Herald-Post, December 1, 1953—Final Edition 63

INDEX—Continued

PAGE

Motion of Defendant, etc.—(Continued):
Exhibit "G"—Photostat of Newspaper Article of El Paso Herald-Post, December 3, 1953 —Home Edition 64
Exhibit "H"—Photostat of Newspaper Article of The El Paso Herald-Post, December 4, 1953—Home Edition 65
Exhibit "I"—Photostat of Newspaper Article of El Paso Herald-Post, December 5, 1953 —Home Edition 66
Exhibit "J"—Photostat of Newspaper Article of The El Paso Times, December 5, 1953 67
Exhibit "K"—Photostat of Newspaper Article og The El Paso Times, December 6, 1953 68
Case called for Trial, etc. 69
Jury impaneled, selected and sworn 69
Arraignment of Defendant and Plea of Not Guilty 69
Opening Statement by Mr. Williams, Counsel for the Government 70

Evience for the Government:
Testimony of Mrs. Elsie Perryman 72
Mrs. Elsie Perryman (Resumed) 103
W. J. Upton 116
Don A. Wilson 126
Exhibit "G-15"—Signature Card of Clinton E. Jencks and Virginia D. Jencks, with the American National Bank, Silver City, New Mexico, dated 4/11/47 130

INDEX—Continued

PAGE

Motion of Defendant, etc.—(Continued):
Evidence for the Government—(Continued):
Testimony of Mrs. E. Perryman—(Contd.):
Exhibit "G-16"—Signature Card of Clinton E. Jencks and Virginia D. Jencks, with the American National Bank, Silver City, New Mexico, dated 8/3/51 131
Exhibit "G-14"—Safe Deposit Box Contract Card signed by Clinton E. Jencks & Cipriano Montoya with The Grant County State Bank, Baynard, New Mexico, dated 4/6/50 132
Testimony of George F. Mesnig 133
Exhibit "G-17"—Last Page of Motion for Continuance 139
Exhibit "G-19"—Notarial Commission State of New Mexico to Arthur Flores, dated 3/19/48 145
Exhibit "G-18"—Notary Public Bond and Oath of Office of Arthur Flores, dated 3/19/48 149
Exhibit "G-20"—Enlarged Photostat of Signatures 155
Exhibit "G-21"—Enlarged Photostat of Signatures 156
Exhibit "G-22"—Enlarged Photostat of Signatures 162
Exhibit "D-1"—Photostat of Affidavit of Noncommunist Union Officer, Clinton E. Jencks, dated 4/28/50 178

INDEX—Continued

PAGE

Motion of Defendant, etc.—(Continued):
Evidence for the Government—(Continued):
Testimony of George F. Mesnig—(Contd.):
Exhibit "D-2"—Photostat of Affidavit of Noncommunist Union Officer, Clinton E. Jencks, dated 4/28/50 186
Stipulation of Counsel relative to Government Exhibit No. 1, etc. 189
Exhibit "D-3"—Photostat of Affidavit of Noncommunist Union Officer, Clinton E. Jencks, dated 4/28/50 192
Testimony of Edward James Currie 194
J. W. Ford 250
Clay Martin Brooks 384
Exhibit "G-23"—Joint Stipulation of Counsel relative to Production of certain Documents, etc., dated 1/14/54 406
Exhibit "G-23-A"—Statement of Money Received 408
Testimony of George Knott 409
Exhibit "D-21-A"—Expense Account—International Union Mine, Mill & Smelter Workers, (Period ending 3/15/47 439
Exhibit "D-10-A"—Expense Account—International Union Mine, Mill & Smelter Workers, (Period ending 9/15/46) 443
Exhibit "D-11-A"—Expense Account—International Union Mine, Mill & Smelter Workers, (Period ending 9/30/46) 447

INDEX—Continued

PAGE

Motion of Defendant, etc.—(Continued):
Evidence for the Government—(Continued):
Testimony of George Knott—(Continued):
Exhibit "D-12-A"—Expense Account—International Union Mine, Mill & Smelter Workers, (Period ending 10/15/46) 450
Exhibit "D-13-A"—Expense Account—International Union Mine, Mill & Smelter Workers, (Period ending 10/31/46) 453
Exhibit "D-14-A"—Expense Account—International Union Mine, Mill & Smelter Workers, (Period ending 11/15/46) 456
Exhibit "D-15-A"—Expense Account—International Union Mine, Mill & Smelter Workers, (Period ending 11/30/46) 460
Exhibit "D-16-A"—Expense Account—International Union Mine, Mill & Smelter Workers, (Period ending 12/15/46) 463
Exhibit "D-17-A"—Expense Account—International Union Mine, Mill & Smelter Workers, (Period ending 1/15/47) 466
Exhibit "D-18-A"—Expense Account—International Union Mine, Mill & Smelter Workers, (Period ending 1/31/47) 470

INDEX—Continued

PAGE

Motion of Defendant, etc.—(Continued):
Evidence for the Government—(Continued):
Testimony of George Knott—(Continued):
Exhibit "D-19-A"—Expense Account—International Union Mine, Mill & Smelter Workers, (Period ending 2/15/47) 473
Exhibit "D-22-A"—Expense Account—International Union Mine, Mill & Smelter Workers, (Period ending 3/31/47) 478
Exhibit "D-23-A"—Expense Account—International Union Mine, Mill & Smelter Workers, (Period ending 4/15/47) 481
Exhibit "D-9-A"—Expense Account—International Union Mine, Mill & Smelter Workers, (Period ending 8/31/46) 484
Testimony of James E. Petersen 490
Jesus Terrazas 561
Clay Martin Brooks (Recalled) 578
Harvey M. Matusow 584

VOLUME II.

Exhibit "D-24"—Certification of Registration and Voting of Harvey M. Matusow, in 1952 Board of Elections for Montgomery County, Dayton, Ohio, dated 1/4/54 626
Exhibit "D-24-A"—Voting Record—Board of Elections in the City of New York, dated 1/11/54 627

INDEX—Continued

PAGE

Motion of Defendant, etc.—(Continued):
Evidence for the Government—(Continued):
Testimony of James E. Petersen—(Contd.):
Exhibit "D-25"—Registration and Voting Record of Harvey M. Matusow in the County of N. Y., State of N. Y., for the Year 1952 632
Exhibit "D-25-A"—Certificate of Archibald R. Watson, County Clerk and Clerk of the Supreme Court of N. Y., County, date 1/11/54.. 633
Exhibit "D-25-B"—Certificate of Samuel H. Hofstadter, Justice of the Supreme Court of the State of N. Y., dated 1/11/54 634
Defendant's Motion Re Production of FBI Reports (Matusow) and Ruling thereon 658
Exhibit "D-27"—Photostat of Check, The New Mexican, Inc., to Order of Harvey Matt, for $12.00, dated 12/11/50 676
Exhibit "D-28"—Photostat of Wage Record of Harvey Matusow, 1949 677
Testimony of James E. Petersen (Recalled) 696
Exhibit "D-29"—Letter, International Union of Mine, Mill & Smelter Workers to John C. Clark, dated 6/30/47 704
Exhibit "D-30"—Check, International Union of Mine, Mill & Smelter Workers to Order of James E. Petersen, for $116.00, dated 7/3/47 707

INDEX—Continued

PAGE

Motion of Defendant, etc.—(Continued):
Evidence for the Government—(Continued):
Testimony of James E. Petersen—(Contd.):
Exhibit "D-31"—Minutes and Reports of Mine Smelting & Refining Conference held in Salt Lake City, Utah; June 22-23, 1947 712
Exhibit "D-32"—Minutes of International Executive Board Meeting—IUMM&SW-CIO, Feb. 16-21, 1948 752
Exhibit "D-33"—Photostat of Expense Account, International Union Mine, Mill & Smelter Workers, (Period ending 2/15/48) 888
Exhibit "D-34"—Photostat of Expense Account, International Union Mine, Mill & Smelter Workers, (Period ending 2/29/48) 890
Defendant's Motion Re Production of FBI Reports (Ford) and Ruling thereon ... 897
Testimony of Kenneth Eckert 898
Jesus Terrazas (Recalled) .. 928
John P. Thompson 964
Exhibit "G-24"—Newspaper Article of "The Union Worker", October, 1949 968
Exhibit "G-1"—Photostat of Affidavit of Noncommunist Union Officer, Clinton E. Jencks, dated 4/28/50 978
Exhibit "G-2"—Photostat of Letter, Amalgamated Bayard District Union of Mine, Mill & Smelter Workers addressed "Dear Sir" dated 5/1/50 980

INDEX—Continued

PAGE

Motion of Defendant, etc.—(Continued):
Evidence for the Government—(Continued):
Exhibit "G-3"—Photostat of Letter, National Labor Relations Board to Clinton E. Jencks, Presient, Amalgamated Bayard District, Local 890, Union of Mine, Mill & Smelter Workers, dated 5/2/50 981
Exhibit "G-3-A"—Photostat of Letter, National Labor Relations Board to Clinton E. Jencks, President, Amalgamated District, Local 890, Union of Mine, Mill & Smelter Workers, dated 5/2/50 982
Exhibit "G-4"—Photostat of Certificate of Union Officers (Form 1080), dated 4/27/50 983
Exhibit "G-5"—Photostat of Distribution of Financial Data Certificate (F-1085), ending 12/31/49 985
Exhibit "G-6"—Photostat of Letter, signed William L. Connolly, Director to C. E. Jencks, dated 3/31/50 987
Exhibit "G-6-A"—Photostat of Letter, U. S. Dept., of Labor, Washington, D. C., to C. E. Jencks, dated 3/31/50 988
Exhibit "G-7"—Photostat of Affidavit of Noncommunist Union Officer, Clinton E. Jencks, dated 10/15/49 989
Exhibit "G-8"—Photostat of Certificate of Clinton E. Jencks, (Form 1080), dated 10/15/49 991
Exhibit "G-9"—Photostat of Distribution of Financial Data Certificate (F-1085), ending 12/31/48 993

INDEX—Continued

PAGE

Motion of Defendant, etc.—(Continued):
Evidence for the Government—(Continued):
Exhibit "G-10"—Photostat of Certificate of Intent, National Labor Relations Board, (Form 3054) ending 12/31/49 995
Exhibit "G-11"—Photostat of Pattern 32 Letter to C. E. Jencks, dated 4/21/50 996
Exhibit "G-11-A"—Photostat of Letter, National Labor Relations Board, El Paso, Texas to C. E. Jencks, dated 4/21/50 997
Exhibit "G-12"—Photostat of Letter, Clinton E. Jencks to Aubrey McEachern, dated 4/27/50 998
Exhibit "G-12-A"—Photostat of Letter, Aubrey McEachern to Clinton E. Jencks, dated 5/2/50 999
Exhibit "G-13"—Photostat of Form 501 "Charge against Employer", National Labor Relations Board 1000
Testimony of Kenneth Eckert (Recalled) .. 1001
Motion of Defendant after the Government rested to Compel Election 1003
Motion of Defendant after the Government rested to strike, etc., and Ruling thereon .. 1004
Motion of Defendant after the Government rested for a Judgment of Acquittal and Ruling thereon 1021
Colloquy between Court and Counsel 1022
Evidence for Defendants:
Exhibit "D-38"—Photostat of General Orders, No. 67 1030
Exhibits "D-39" thru "D-45"—Photostats of General Orders No. 55 1033

MOTION TO COMPEL ELECTION.

(Filed September 18, 1953.)

To The Court:

The defendant, Clinton E. Jencks, moves for an order directing the United States to elect whether it will go to trial on either Cont One or Count Two of the indictment, and places this motion upon the following grounds:

1. The offenses alleged in the first and second counts are in fact and in law identical for the reason that each charges the same making, using and causing to be made and used, and the same filing and causing to be filed, of the identical false writing or document. Defendant can neither be twice tried nor twice punished for one act.

2. The status charged in Count One, membership in the Communist Party, is mutually exclusive and repugnant to the status charged in Count Two, affiliations with the Communist Party, and both counts cannot stand together.

Respectfully submitted,
JOHN T. McTERNAN,

Los Angeles, California.

(S.) E. B. ELFERS,
(E. B. Elfers),
Attorneys for Defendant.

615 Caples Building,
El Paso, Texas.

MOTION FOR BILL OF PARTICULARS.

(Filed September 18, 1953.)

To The Court:

The defendant, Clinton E. Jencks, moves for an order directing the United States Attorney to furnish a bill of particulars pursuant to Rule 7 (f) of the Federal Rules of Criminal Procedure, and written ten days after the entry of the order therefore, with respect to the following matters:

1. With respect to Count One:

a. Upon the basis of what overt act or acts is it alleged that defendant knew that he was a member of the Communist Party on April 28, 1951.

b. If the government proposes to prove that defendant was in fact a member of the Communist Party on April 28, 1951, upon what overt or act or acts does it intend to rely.

c. (1) If the answer to "b" is that the defendant joined the Communist Party, then

(a) What act or acts constituted joining the Communist Party.

(b) When and where were such act or acts performed.

c. (2) If the answer to "b" is that the defendant paid dues to the Communist Party, then,

(a) When and where were such dues paid.

c. (3) If the answer to "b" is that the defendant attended meetings of the Communist Party, then

(a) When and where did he attend such meetings.

c. (4) If the answer to "b" is that the defendant has made admissions of membership in the Communist Party, then,

(a) When and where were such admissions made.

c. (5) If any of the foregoing occurred prior to April 21, 1951, does the government propose to prove that the defendant continued his membership in the Communist Party to and including said date.

(a) If so, upon what overt act or acts of defendant does it intend to rely.

(b) When and where did such act or acts occur.

2. With respect to Count Two:

a. Each of the particulars requested with respect to Count One, above, inclusive, modifying said requests only to the extent of substituting the words "affiliated with" for "member of" and "membership in" wherever such substitution is necessary or required.

The foregoing particulars and each of them are requested, together and separately, and in the event that any portion of the foregoing motion for particulars is

denied, defendant moves that an order be made granting the balance of said motion.

In the event the United States is without knowledge as to any of the foregoing matters as to which particulars are requested, defendant moves for an order requiring it to state any such lack of knowledge in lieu of furnishing such particulars, and in the event that knowledge is subsequently acquired as to any such matters, to furnish the same in a supplemental bill of particulars within fifteen days after acquiring such knowledge, and in no event less than thirty days before trial.

Respectfully submitted,

JOHN T. McTERNAN,

(S.) E. B. ELFERS,

(E. B. Elfers),

Attorneys for Defendant.

615 Caples Building,
El Paso, Texas.

MOTION TO DISMISS.

(Filed September 18, 1953.)

To The Court:

The defendant, Clinton E. Jencks moves the Court for its order dismissing the indictment herein, and each count thereof, upon each and all of the grounds set out below.

First Count.

1. The first count of the indictment does not state facts sufficient to constitute an offense against the United States in that, among other grounds,

(a) It fails to specify, by name or title, the person who administered the oath upon the affidavit alleged and that said person was competent to administer it.

(b) It fails to allege facts showing that the affidavit allegedly made, used and filed by defendant was permitted or required by law.

(c) It fails to allege that defendant, at the time the affidavit was allegedly made, used and filed, was an officer of a labor organization, within the meaning of Section 9 (h) of the National Labor Relations Act, as amended (29 U. S. C. A. Sec. 159 (h)), or otherwise.

(d) It fails to allege that any statement or representation allegedly contained in the affidavit was false in fact.

(e) It fails to allege that defendant, at the time of the alleged crime, to-wit, April 28, 1950, was a member of the Communist Party.

(f) It fails to allege how or in what manner or by virtue of what facts defendant joined or became a member of the Communist Party.

(g) It fails to allege how or in what manner or by what outward manifestations defendant showed that he

"well knew he was a member of the Communist Party" as alleged in Count One of the indictment.

(h) It fails to allege how or in what manner or by virtue of what facts defendant was a member of the Communist Party on or about April 28, 1950.

(i) It fails to allege that the defendant "knowingly" made or used or filed the false writing or document.

2. The first count of the indictment is so vague and indefinite and so lacking in essential facts as to fail to advise the defendant of the nature and cause of the accusation against him in each and every of the particulars set forth above. In this connection, defendant particularly alleges the said indictment is defectively vague and indefinite in that, among others:

(a) The allegation that "he was a member of the Communist Party" does not advise the defendant as to whether it is alleged that he was on April 28, 1950, or at some other time, a member of the Communist Party.

(b) The statute (Labor-Management Relations Act of 1947) requires an "Affidavit of Non-Communist Union Officer" to contain a statement or representation that the affiant "is not" a member of the Communist Party, whereas the indictment charges that defendant "was" a member of the Communist Party.

(c) It is not stated in connection with what "matter within the jurisdiction of the National Labor Relations Board" the defendant made and used the alleged false writing and document.

3. The allegation of membership in the Communist Party in the first count and the allegation of affiliation with the Communist Party in the scond count are mutually exclusive and repugnant, and the first count cannot stand with the second count.

4. The first count alleges an offense that is in law and in fact identical with the offense alleged in the second count for the reason that in each count is alleged the same making, using and causing to be made and used, and the same filing and causing to be filed, of the identical false writing or document; two counts purporting to charge separate offenses may not, under the statute here involved, be predicated upon the same making, using and filing of the same writing or document, and to try the defendant upon two such counts is to multiply offenses and place him twice in jeopardy for the same offense.

5. The first count of the indictment is materially at variance with the statute on which the indictment is purportedly based (18 U. S. C. A. Sec. 1001) in that the indictment fails to allege that the defendant "knowingly" made or used the alleged false writing and document.

6. Section 1001 of Title 18 and the Labor-Management Relations Act of 1947, particularly Section 159 (h) of Title 29 pursuant to which the purported false writing and document were executed are unconstitutional on their face and as applied to the defendant herein, and in particular are violative of Article I, Section 9, Clause 3, and of the First, Fifth, Ninth, and Tenth Amendments to the Constitution of the United States.

7. Section 1001 of Title 18 and the Labor-Management Relations Act of 1947, particularly Section 159 (h) of Title 29, pursuant to which the purported false writing and document were executed, are unconstitutional and violative of the foregoing provisions of the Constitution of the United States as applied to the defendant herein in that:

(a) The indictment does not state:

(1) The defendant did or does believe in, teach or advocate political strikes;

(2) Any labor organization of which the defendant may be an officer acted or acts in such a manner as to constitute a burden on or obstruction to interstate commerce;

(3) There was or is a clear and present or any danger that either the defendant or any labor organization of which he may be an officer has engaged or will engage in political strikes or any conduct or activity which has been or will be an obstruction to or burden on interstate commerce.

(b) Said statutes as constructed and applied have caused, and in this case will and do cause, serious inhibitions on defendant's right freely to speak and publish his sentiments.

8. The first count of the indictment fails to state an offense against the United States in that the only penal statute applicable to the making, using and filing of the alleged false writing and document and the alleged false, fictitious and fraudulent statement and representations,

to-wit, Section 35 (A) of the Criminal Code of the United States, was repealed on June 25, 1948.

Second Count.

1. Defendant makes part hereof and incorporates by reference Paragraphs 1, 2, 4, 6, 7 and 8 and directed to the first count of the indictment and moves that the second count of the indictment be dismissed on each and all of the grounds set out in those paragraphs, modifying them only to the extent of substituting the words "affiliated with" for the words "member of" wherever that substitution is necessary or required for purposes of the motion set out in this paragraph.

2. The allegation of affiliation with the Communist Party in the second count and the allegation of membership in the Communist Party in the second count are mutually exclusive and repugnant, and the first count cannot stand with the second count.

3. The second count of the indictment is materially at variance with the statute on which the indictment is purportedly based (18 U. S. C. A. Sec. 1001) in that the indictment fails to allege that the defendant "knowingly" made or used the alleged false writing and document.

4. The word "affiliated" as used in the second count and as used in Section 9 (h) of the National Labor Relations Act, as amended (29 U. S. C. A. Sec. 159 (h)). is so vague, uncertain and indefinite as to set no intelligible standard of prescribed conduct and to give no fair or adequate notice of the offense charged, all in con-

travention of the due process clause of the Fifth Amendment to the Constitution of the United States.

Respectfully submitted,
JOHN T. McTERNAN,
Los Angeles, California.

(S.) E. B. ELFERS,
(E. B. Elfers),
Attorneys for Defendant.

615 Caples Building,
El Paso, Texas.

ORDER OVERRULING DEFENDANT'S MOTION TO DISMISS.

(Filed November 4, 1953).

On the 23rd day of October, 1953, came on to be considered by the Court defendant's motion to dismiss the indictment in the above entitled and numbered cause and plaintiff, United States of America, appeared by Joseph Alderman, Esquire, Special Assistant to the Attorney General, and Holvey Williams, Esquire, Assistant United States Attorney for the Western District of Texas, and defendant appeared by his attorneys of record, John T. McTerman, Esquire, and E. B. Elfers, Esquire, and at the conclusion of argument of counsel on October 24, 1953, the Court took the matter under advisement.

Now on the 4th day of November, 1953, having carefully considered the matter, as well as the authorities submitted by the respective parties, the Court is of the

opinion that said motion is not well taken and should be overruled.

It is, therefore, Ordered that said motion be, and the same is hereby, in all things overruled.

(S.) R. E. THOMASON,
United States District Judge.

ORDER OVERRULING DEFENDANT'S MOTION TO REQUIRE UNITED STATES ATTORNEY TO FURNISH LIST OF WITNESSES.

(Filed October 24, 1953).

On the 23rd day of October, 1953, came on to be considered by the Court defendant's motion to require the United States Attorney to furnish the defendant and his attorneys of record a written list of witnesses who will be subpoenaed as witnesses for the government in the above entitled and numbered case and plaintiff, United States of America, appeared by Joseph Alderman, Esquire, Special Assistant to the Attorney General, and Holvey Williams, Esquire, Assistant United States Attorney for the Western District of Texas, and defendant appeared by his attorneys of record, John T. McTerman, Esquire, and E. B. Elfers, Esquire.

Now on the 24th day of October, 1953, having heard and considered argument of counsel, the Court is of the Opinion that said motion is not well taken.

It is, therefore, Ordered that said motion be, and the same is hereby, in all things overruled.

(S.) R. E. THOMASON,
United States District Judge.

ORDER OVERRULING DEFENDANT'S MOTION FOR ISSUANCE OF A PRETRIAL SUBPOENA—RULE 17 (c).

(Filed October 24, 1953).

On the 23rd day of October, 1953, came on to be considered by the Court defendant's motion for issuance of a pre-trial subpoena, directed to the United States Attorney for the Western District of Texas, and plaintiff, United States of America, appeared by Joseph Alderman, Esquire, Special Assistant to the Attorney General, and Holvey Williams, Esquire, Assistant United States Attorney for the Western District of Texas, and defendant appeared by his attorneys of record, John T. McTerman, Esquire, and E. B. Ehlers, Esquire.

Now on the 24th day of October, 1953, having heard and considered argument of counsel, the Court is of the opinion that said motion is not well taken.

It is, therefore, Ordered that said Motion be, and the same is hereby, in all things overruled.

(S.) R. E. THOMASON,
United States District Judge.

ORDER OVERRULING DEFENDANT'S MOTION TO COMPEL ELECTION.

(Filed October 24, 1953).

On the 23rd day of October, 1953, came on to be considered by the Court defendant's motion for an order

directing the United States to elect whether it will go to trial on either Count One or Count Two of the indictment in the above entitled and numbered case, and plaintiff, United States of America, appeared by Joseph Alderman, Esquire, Special Assistant to the Attorney General, and Holvey Williams, Esquire, Assistant United States Attorney for the Western District of Texas, and defendant appeared by his attorneys of record, John T. McTerman, Esquire, and E .B. Elfers, Esquire.

Now on the 24th day of October, 1953, having heard and considered argument of counsel, the Court is of the opinion that said motion is not well taken.

It is, therefore, Ordered that said motion be, and the same is hereby, in all things overruled.

(S.) R. E. THOMASON,
United States District Judge.

ORDER OVERRULING DEFENDANT'S MOTION TO DISMISS INDICTMENT-ILLEGALLY AND UNCONSTITUTIONALLY CONSTITUTED GRAND JURY.

(Filed October 24, 1953).

On the 23rd day of October, 1953, came on to be considered by the Court defendant's motion to dismiss the indictment in the above entitled and numbered case, and plaintiff, United States of America, appeared by Joseph Alderman, Esquire, Special Assistant to the Attorney General, and Holvey Williams Assistant United States Attorney for the Western District of Texas, and defend-

ant appeared by his attorneys of record, John T. McTerman, Esquire, and E. B. Elfers, Esquire.

Now on the 24th day of October, 1953, having heard and considered argument of counsel and testimony of the witness, Laurence E. Sevens, the Court is of the opinion that said motion is not well taken.

It is, therefore, Ordered that said motion be, and the same is hereby, in all things overruled.

(S.) R. E. THOMASON,
United States District Judge.

ORDER OVERRULING DEFENDANT'S MOTION FOR BILL OF PARTICULARS.

(Filed November 4, 1953).

On the 23rd day of October, 1953, came on to be considered by the Court defendant's motion for an order directing the United States Attorney to furnish a bill of particulars in the above entitled and numbered case, and plaintiff, United States of America, appeared by Joseph Alderman, Esquire, Special Assistant to the Attorney General, and Holvey Williams, Esquire, Assistant United States Attorney for the Western District of Texas, and defendant appeared by his attorneys of record, John T. McTerman, Esquire, and E. B. Elfers, Esquire, and at the conclusion of argument of counsel on October 24, 1953, the Court took the matter under advisement.

Now on the 4th day of November, 1953, having carefully considered the matter, as well as the authorities

submitted by the respective parties, the Court is of the opinion that said motion is not well taken and should not be granted.

It is, therefore, Ordered that said motion be, and the same is hereby, in all things overruled.

(S.) R. E. THOMASON,
United States District Judge.

SUBPOENA DUCES TECUM DIRECTED TO HAROLD L. HUDSON.

(Filed January 21, 1954).

To Harold L. Hudson, Officer in Charge, 33rd Sub-Regional Office, National Labor Relations Board

You are hereby commanded to appear in the District Court of the United States for the Western District of Texas at United States Court House in the city of El Paso on the 25th day of November 1953 at 9:30 o'clock A. M. to testify in the case of United States v. Clinton E. Jencks, #54013 Criminal and bring with you the papers, matters and things more particularly described on the sheet annexed hereto and by this reference made part thereof.

This subpoena is issued upon application of the defendant.

MAXEY HART,
Clerk.
By (S.) PAULINE G. SILVEUS,
Deputy Clerk.
(Seal)

E. B. ELFERS,
JOHN T McTERNAN,
Attorneys for Defendant.

615 Caples Building,
El Paso, Texas.

1. All affidavits of non-communist union officer (Form NLRB 1081) bearing the signature, or the purported signature, of Clinton E. Jencks received by any officer, agent or employee of the National Labor Relations Board in the years 1949, 1950 and 1951.

2. All letters, telegrams, memoranda or other communications received by any officer, agent or employee of the National Labor Relations Board in connection with or pertaining to any affidavit described in Paragraph 1 above.

3. File copies of all letters, telegrams, memoranda or other communications sent by any officer, agent or employee of the National Labor Relations Board in connection with or pertaining to any affidavit described in Paragraph 1 above.

4. File copies of any notices sent by any officer, agent or employee of the National Labor Relations Board to Local 890, International Union Mine, Mill and Smelter Workers of America, in connection with or pertaining

to any filing by said Local 890, or any officer thereof, pursuant to Section 9 (f), (g) or (h) of the National Labor Relations Act, as amended, in the years 1949, 1950 and 1951.

5. Copies of all notices, letters, telegrams memoranda or communications sent to or received from the said Local 890 by the United States Department of Labor in connection with or pertaining to any filing by the said Local 890, or any officer thereof pursuant to Section 9 (f), (g) or (h) of the National Labor Relations Act, as amended, in the years 1949, 1950 and 1951, said copies being in your pos ssion or under your control.

Return on Service.

Received this subpoena at El Paso, Texas on November 13, 1953 at U. S. Court House, El Paso, Texas. I served it on the within named Harold L. Hudson by delivering a copy to him.

(S.) JOHN T. McTERNAN.

SUBPOENA DUCES TECUM DIRECTED TO CHARLES F. HERRING, U. S. ATTORNEY AND HOLVEY WILLIAMS, ASST. U. S. ATTORNEY.

(Filed January 21, 1954).

To Charles F. Herring, U. S. Attorney, Western District of Texas; Holvey Williams, Assistant U. S. Attorney in charge, El Paso Division.

You are hereby commanded to appear in the District Court of the United States for the Western District of

Texas at United States Court House in the city of El Paso on the 25th day of November 1953 at 9:30 o'clock A. M. to testify in the case of United States v. Clinton E. Jencks, #54013 Criminal and bring with you the papers, matters and things more particularly described on the sheet annexed hereto and by this reference made part hereof.

This subpoena is issued upon application of the defendant.

MAXEY HART,
Clerk.

By (S.) PAULINE G. SILVEUS,
Deputy Clerk.

(Seal)

E. B. ELFERS,
JOHN T McTERNAN
Attorneys for Defendant.

615 Caples Building,
El Paso, Texas.

1. All affidavits of non-communist union officer (Form NLRB 1081) in your possession or under your control, which bear the signature, or the purported signature of Clinton E. Jencks, and which are dated at any time in the years 1949, 1950 and 1951.

2. All letters telegrams, memoranda or other communications received by any officer, agent or employee of the National Labor Relations Board, in connection with or pertaining to any affidavit described in Paragraph 1 above, and in your possession or under your control.

3. File copies of all letters, telegrams, memoranda or other communications sent by any officer, agent or employee of the National Labor Relations Board in connection with or pertaining to any affidavit described in Paragraph 1 above, and in your possession or under your control.

4. File copies of any notices sent by any officer, agent or employee of the National Labor Relations Board to Local 890, International Union Mine, Mill and Smelter Workers of America, in connection with or pertaining to any filing by said Local 890 or any officer thereof, pursuant to Section 9 (f), (g) or (h) of the National Labor Relations Act, as amended, in the years 1949, 1950 and 1951, and in your possession or under your control.

5. Copies of all notices, letters, telegrams, memoranda or communications sent to or received from the said Local 890 by the United States Department of Labor in connection with or pertaining to any filing by the said Local 890, or any officer thereof pursuant to Section 9 (f), (g) or (h) of the National Labor Relations Act, as amended, in the years 1949, 1950 and 1951, said copies being in your possession or under your control.

6. Any membership card in the Communist Party, or other written evidence of membership therein, issued or purportedly issued to Clinton E. Jencks, whether by that or any other name, and actually or purportedly evidencing the membership in the Communist Party of Clinton E. Jencks, whether by that or any other name, and for any period of time, the same being in your possession or under your control.

7. Any record, document, writing or paper of any kind actually or purportedly evidencing the payment of initiation fees, membership dues, or other financial obligations of membership, in the Communist Party by or for the account or benefit of Clinton E. Jencks, whether by that or any other name, and for any period of time, the same being in your possession or under your control.

8. Any record, document, writing or paper of any kind evidencing or recording the membership in the Communist Party of Clinton E. Jencks, whether by that or any other name, and for any period of time, the same being in your possession or under your control.

9. Any writing or document actually or purportedly containing any acknowledgment or admission, direct or indirect, express or implied, of membership in or affiliation with the Communist Party on the part of Clinton E. Jencks, whether by that or any other name, and for any period of time, the same being in your possession or under your control.

10. Any written statement or affidavit of, or notes of interview with, any person, stating directly or indirectly, expressly or impliedly, that such person knew or had information to the effect, or had reason to believe that Clinton E. Jencks at any time was, or was not, a member of or affiliated with the Communist Party.

11. Any document or thing which proves or tends to prove that Clinton E. Jencks was, or was not, a member of or affiliated with the Communist Party at any time, the same being in your possession or under your control.

Return on Service.

Received this subpoena at El Paso, Texas on November 13, 1953 and on November 13, 1953 at U. S. Court House, El Paso, Texas I served it on the within named Charles F. Herring and Holvey Williams by delivering a copy to them.

(S.) JOHN T. McTERNAN.

STIPULATION.

(Filed November 19, 1953).

It Is Hereby Stipulated And Agreed by and between the United States of America, by Holvey Willams, Assistant U. S. Attorney, and the defendant, Clinton E. Jencks, by E. B. Elfers and John T. McTernan, his attorney, as follows:

1. The return day upon the subpoenas duces tecum heretofore issued by the above entitled Court and caused to be served, at the instance of the United States upon Juan Chacon, President, Local 890, International Union Mine, Mill and Smelter Workers of America, and upon Craig Vincent, and, at the instance of the defendant, upon Holvey Williams, Assistant U. S. Attorney, and Harold L. Hudson, Officer in Charge, 33rd Sub-Regional Office, National Labor Relations Board, shall be continued until Thursday, January 7th, 1954, before the above entitled Court at 9:30 A. M. in the United States Court House at El Paso, Texas.

2. Each of said subpoenas shall be deemed an application to the Court for the issuance of a pre-trial subpoena

pursuant to Rule 17 (c) of the Federal Rules of Criminal Procedure, and said application shall be heard before the above entitled Court on Thursday, January 7th, 1954, at the place aforesaid.

3. Any objection which either party may have to the issuance of any such subpoena, or to production of any of the papers, documents or objects described therein may be heard on said return day, to-wit January 7th, 1954, and each of said objections shall be deemed a motion to quash the subpoena as fully as if a written motion to quash such subpoena had been filed and served upon the party causing said subpoena to be issued.

Dated at El Paso, Texas, this 19th day of November, 1953.

(S.) HOLVEY WILILAMS,
(Holvey Williams),
Assistant U. S. Attorney.
(S.) E. B. ELFERS,
(E. B. Elfers),
JOHN T. McTERNAN,
Attorneys for Defendant, Clinton E. Jencks.

MOTION TO RECONSIDER RULING AND ORDER DENYING MOTION FOR BILL OF PARTICULARS.

(Filed January 8, 1954).

The defendant, Clinton E. Jencks, moves this Court to reconsider its ruling and order denying his motion for bill of particulars only to the extent that said ruling and order denied him a statement of those overt acts which

the prosecution will seek to prove and from which it will argue that the defendant "well knew he was affiliated with the Communist Party" as charged in the Second Count of the indictment herein.

This motion will be based upon all of the papers, records and files in this cause, together with the memorandum annexed hereto.

(S.) JOHN T. McTERNAN,
(John T. McTernan),
(S.) E. B. ELFERS,
(E. B. Elfers),
Attorneys for Defendant.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RECONSIDERATION OF RULING AND ORDER DENYING BILL OF PARTICULARS.

I.

This aspect of defendant's request for a statement of particulars is no different from that held to be required by the Second Circuit in United States v. Remington, 191 Fed. 2d. 246.

In the Remington case the charge was that the defendant had perjured himself in denying that he had ever been a member of the Communist Party whereas he "well knew and believed" that this testimony was untrue. The Court held that the key issue was the state of the defendant's mind and the burden lay upon the prosecution to prove some "overt act" from which the jury may "infer" the defendant's actual belief. (191 Fed. 2d at 249.)

The trial Court there denied defendant's motion for bill of particulars and for this reason, among others, the conviction was reversed. The Court held that the failure to require a bill of particulars left the issue of the defendant's state of mind "so at large" that "as the case was tried, the defendant did not know even at the end of the government's case what he had to meet; he could only guess what the prosecution was going to say he thought to be membership." (191 Fed. 2d at 250.)

The Remington case cannot be distinguished from the case at bar on the ground that it involved prejury while this case involves false statement. In this case the false statement that is charged rests not upon disparity between the defendant's oath and the objective fact, but on the disparity between the defendant's oath and what he knew to be true. Thus the issue here is precisely the same as that involved in the Remington case. The fact that under a perjury indictment the perjury must be proved by the direct testimony of two witnesses or one corroborative witness merely defines the nature of the prosecution's burden of proof. It qualifies the degree of proof required but does not change the fact to be proven.

Moreover, in American Communications v. Doud, 339 U. S. 382, 411, it has been specifically held that the issue of falsity turns upon the mental state of the affiant and that that has to be proven only by showing the "overt acts" whereby the accused manifested his state of mind. The Court in the Remington case made it plain that it used the expression "overt acts" in precisely the same sense as the Supreme Court did in the Doud case. (191 Fed. 2d at 249.)

Since the issue tendered by the Second Court of the indictment turns upon proof of overt acts whereby the

defendant's state of mind was manifest and since the indictment fails to allege any such overt acts, the reasoning of the Remington case is unqualifiedly applicable here. To fail to give the defendant the particulars requested is to deny him due process.

II.

Under a virtually identical indictment particulars in the respect here sought have been granted.

At the oral argument upon the motion for bill of particulars in this case government counsel stressed only hat other District Courts had declined the request for particulars. Government counsel could offer no other argument because upon principle and justice no other argument was available. Since the Court's ruling here, the issue has been litigated again before Judge Holtzoff of the United States District Court for the District of Columbia in United States v. Gold (Criminal No. 1344-53). So far as counsel is advised, no formal opinion was handed down by Judge Holtzoff. He did rule however that the defendant be furnished with a statement of all overt acts on the basis of which the prosecution would claim at the trial that the defendant knew that he was affiliated with the Communist Party. This ruling was made upon the authority of the Remington case and upon an indictment identical in all material respects in its affiliation count with Count Two of this indictment.

Respectfully submitted,

(S.) JOHN T. McTERNAN,
(John T. McTernan),

(S.) E. B. ELFERS,
(E. B. Elfers),
Attorneys for Defendant.

615 Caples Building,
El Paso, Texas.

MOTION FOR RECONSIDERATION OF DENIAL OF MOTION TO DISMISS.

(Filed January 8, 1954).

The defendant, Clinton E. Jencks, moves this Court to reconsider its ruling and order heretofore made denying his Motion to Dismiss the indictment to the extent that said ruling and order denies the following ground of his motion:

The word "affiliated" as used in the second count and as used in Section 9 (h) of the National Labor Relations Act, as amended (29 U. S. C. A. Sec. 159 (h), is so vague, uncertain and indefinite as to set no intelligible standard of proscribed conduct and to give no fair or adequate notice of the offense charged, all in contravention of the due process clause of the Fifth Amendment to the Constitution of the United States.

This motion is based upon the papers, records and documents in this case and upon the memorandum of points and authorities attached hereto.

Respectfully submitted,

(S.) JOHN T. McTERNAN,
(John T. McTernan),

(S.) E. B. ELFERS,
Attorneys for Defendant.

615 Caples Building,
El Paso, Texas.

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION.

The Second Count in the indictment, pertaining to "affiliation" fails to allege facts sufficient to constitute an offense and to give the defendant adequate or any notice of the offense charged.

In order to save Section 9 (h) of the National Labor Relations Act as amended (29 U. S. C. 159 (h)) from unconstitutionality, the Supreme Court in the Douds case (339 U. S. 382, 94 L. ed. 925) narrowly construed the statute and laid upon it a gloss which demonstrates the defectiveness of Count Two in the indictment. The construction by the Supreme Court, so far as pertinent here, covers these points:

1. The statute is valid as a regulation of interstate commerce in the face of a danger of political strikes from Communist leaders and those who hold a belief in violent overthrow. (339 U. S. at 388, 392-3.)

2. The affidavit is not intended "to force disclosure of attitudes on all matters of social, economic, moral and political issues." (Id, at 410.)

3. The standard to be applied to the term "affiliated" is not to be abstract but is to be determined by "the practical criterion of fair notice to those to whom the statute is directed. The particular context is all important." (Id, at 412.)

4. The statute applies only to acts done 'with knowledge' that they contravene the statute. (Id at 413.)

5. The statute is not concerned with "past actions" (Id at 413, emphasis in original). "Past conduct actual or threatened by their previous adherence to affiliations and beliefs mentioned in Section 9 (h) is not a bar . . . to resumption of the position." (Id at 414.)

Thus, under a constitutional construction of Section 9 (h) it is a minimum requirement that the allegation concerning "affiliation" not be abstract or bare. It must be factually stated alleging the overt acts so as to meet "the practical criterion of fair notice."

In the indictment here the charge contains the bare allegation that defendant was "affiliated without any allegation of overt acts indicating either the meaning of the term "affiliated" or that the defendant knew he was affiliated. To the extent that "affiliation" contemplates something other than membership; which is the basis of the first count (and it must since otherwise the first and second counts would be redundant) it is so vague, uncertain and indefinite as to state no intelligible standard of proscribed conduct and to give no fair or adequate notice of the offense charged.

The term "affilated" is of "dubious scope." Frankfurther, J. in Douds, supra, at 420. No definition of the term is contained in the statute, nor does any clear definition appear from the committee reports or the legislative debate. The limited judicial discussion of the term affords no guide. The leading case of Bridges v. Wixon, 326 U. S. 135, 89 L. ed. 2103, turned on a statutory definition under the immigration statutes. And even wit the guidance of that statute—which definied affiliation as including those who contributed money or anything of value to an organization which advocated forcible overthrow—the Court could not define the term except as importing

something "less than membership but more than sympathy" (326 U. S. at 143).* Judge Major, in his dissent, in Inland Steel Co. v. National Labor Relations Board, 170 F. 2d 247, said of the discussion of the term "affiliation" in Bridges

*In the proceedings under review in Bridges, Dean Landis had reached one definition of "affiliated", Judge Sears another, only to be reversed by the Board of Immigration Appeals, which was in turn reversed by the Attorney General, who was in turn reversed by the Supreme Court, which held that the Attorney General had given the term "a looser and more expansive meaning than the statute permits". In view of the sharp disagreement concerning the meaning of the term among men who are specialists in language, even with the assistance of a statutory definition, the uncertain and indefinite nature of the term "affords little more than a fertile field for speculation and guess". Major, J., at 170 F. 2d 247, 262. "that its meaning would be quite beyond the reach of the ordinary citizen." In United States ex rel Kettunen v. Reimer, 79 F. 2d 315 (CCA 2), Judge Chase refused to give a comprehensive definition of "affiliation" as used in the deportation statute, saying: "Very likely that is as impossible as it is now unnecessary."

Under these circumstances observance of the injunction in the prevailing opinion in Douds that the term is to be judged by the "particular context" in which it is employed and by the "practical criterion of fair notice" to those to whom it is directed is imperative. Standing alone, it has no meaning by reason of the diverse meanings which may be attributed to it.

Under this indictment the charge of affiliation is made in no context. The indictment affords not the slightest

hint as to the meaning or application attributed to it by the grand jury or as to what the defendant is called upon to meet. But under Douds the charge of "affiliation" must be defined and the defendant must be informed as to what conduct of his, in the Government's view, constituted "affiliation". The indictment must also charge that the defendant knew that such specified conduct constituted "affiliation". In the absence of such allegations the charge of affiliation is a mere "abstraction" which Douds holds is insufficient.

Such a general charge does not inform the defendant of that with which he is charged or enable him to prepare his defense. As the Court said, in Fontana v. United States, 262 Fed. at 286:

". . . when one is indicted for a serious offense the presumption is that he is innocent thereof, and consequently that he is ignorant of the facts upon which the pleader founds his charges, and it is a fundamental rule that the sufficiency of an indictment must be tested on the presumption that the defendant is innocent of it and has no knowledge of the facts charged against him in the pleading."

It is impossible to ascertain from the indictment the meaning of the charge of affiliation or what acts comprised such affiliation. But for an indictment to be sufficient, "the facts must be set forth, so that the Court can determine, and not the pleader, whether or not they constitute the crime." Fontana v. United States, supra, at 288. Facts must appear from the indictment which "will, if proved, support a conviction for the offense alledged." Cruikshank, 93 U. S. 542, at 559. Here, however, only the conclusion of the pleader is stated.

It cannot be suggested that this indictment gives to the accused adequate notice in a criminal case of that which he is charged. If the status of affiliation is definable, or was intended by the grand jury to convey a meaning, it should have been defined in the indictment by a statement of the facts claimed to create the status. If it is undefinable it is ineffective to allege an offense. Thus under either alternative, whether undefinable or definable but undefined, this count is invalid. United States v. Cohen Grocery Co., 255 U. S. 81, 65 L. ed. 516; Lanzetta v. New Jersey, 306 U. S. 451, 83 L. ed. 888, Winter v. New York, 333 U. S. 507, 92 L. ed. 840; Cline v. Frink Dairy Co., 274 U. S. 445, 446; 71 L. ed. 1146. International Harvester Co. v. Kentucky, 234 U. S. 216, 221; 58 L. Ed. 1284; Champlain Refining Co. v. Corporation Commission, 286 U. S. 210, 242; 76 L. ed. 1062; United States v. Cardiff, 344 U. S. 174; United States v. Capital Traction Co., 34 App. DC 592; United States v. Hatau, 43 F. Supp. 507.

Respectfully submitted,
(S.) JOHN T. McTERNAN,
(John T. McTernan).
(S.) E. B. ELFERS,
(E. B. Elfers).
Attorneys for Defendant.

615 Caples Building,
El Paso, Texas.

NOTICE OF CHALLENGE TO ARRAY AND MOTION TO QUASH AND DISMISS JURY LIST, ARRAY AND PANEL.

(Filed January 11, 1954).

To Charles F. Herring, Esq., United States Attorney, and Holvey Williams, Esq., Assistant United States Attorney:

You And Each of You Will Please Take Notice that the undersigned, at a term of this Court to be held at the United States Court House in El Paso, Texas, on the 11th day of January 1954, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, will challenge the array and move to quash and dismiss the entire panel, venire and jury list, on the ground that the method of selecting the jury list, array, panel, venire and trial juries are such as to preclude the selection of a representative cross section of the community for services on the juries of this Court in that,

The names of all persons selected for the panels of prospective jurors in this case were drawn from a jury box which did not contain the names of any female persons; that the Jury Commissioner and the Clerk of this Court did, for the purpose of selecting the said panels, intentionally systematically and entirely exclude all female persons in their selection of names to be placed in said jury box; that this exclusion of such persons was effected solely on account of their sex; that only the names of male persons were placed in said jury box for purposes of selecting said panels, and only from said names of male persons were the names of the prospective jurors on said panels selected; that the practices of the Jury Commissioner and the Clerk of this Court as herein

described have been observed and effected continuously for at least thirty years last past with the result that the name of no female person has during said period of time been placed in a jury box or drawn for trial jury service in this Court.

Said challenge and motion will be made on the further grounds that, by virtue of the foregoing, the jury list, the names in the jury box, the array, the panels and the trial jury in this case have been, are and will be selected contrary to the manner provided in the applicable statutes of the United States (to-wit, Title 28 U. S. Code, Sec. 1861); that defendant has been, is and will be deprived of his right to a trial before a fair and impartial jury contrary to the Sixth Amendment to the Constitution of the United States; that defendant has been, is and will be deprived of a fair trial and due process of law contrary to the Fifth Amendment to said Constitution.

This challenge and motion will be based upon the affidavit of E. B. Elfers, Esquire, and the Memorandum of Points and Authorities hereto attached, together with the testimony of the Jury Commissioner and such other testimony as defendant may be advised to adduce at the time this challenge and motion shall be heard.

(S.) JOHN T. McTERNAN,
(John T. McTernan),
(S.) E. B. ELFERS,
(E. B. Elfers),
Attorneys for Defendant.

615 Caples Building,
El Paso, Texas.

MEMORANDUM OF POINTS AND AUTHORITIES.

1. The intentional and systematic exclusion of women from the lists or boxes or panels from which the trial jury is drawn renders the jury fatally unrepresentative of the community in the same manner as the exclusion of an economic or racial group.

Ballard v. United States, 329 US 187, 193-194; 91 L. ed. 181, 186

Thiel v. Southern Pacific Co., 328 US 217; 90 L. ed. 1181

Smith v. Texas, 311 US 128; 85 L. ed. 84

2. Systematic exclusion of women from trial juries contravenes our basic concepts of a democratic society and representative government; it results in a purposeful denial of detachment and impartiality in the trial jury that undermines the meaning of jury trial as guaranteed in the Sixth Amendment.

Ballard v. United States, supra

United States v. Roemig, (DD ND, IA.) 52 F. Supp. 857, 862 Compare: Glasser v. United States, 315 US 60; 86 L. ed. 680

3. The Congress, being without power to exclude women from federal juries, may not accomplish that result by reference to a state law making such exclusion.

Thiel v. Southern Pacific Co., 328 US 217, 221; 90 L. ed. 1181, 1185.

Kie v. United States (CC, Ore.) 27 Fed. 351

4. The statute creating qualifications for federal jurors (28 USC Section 1861) was intended to establish uniform standards of qualification for jurors in Federal Court instead of making qualifications depend upon state laws. To interpret subdivision four of that section to disqualify women in this District would defeat the statutory aim of uniformity by disqualifying, in this District and all others situated in states having statutes similar to the Texas statute, at least one half the population. Such an absurd contradiction of purpose cannot be attributed to the Congress.

28 USCA Section 1861, Revisers Note Report of the Judicial Conference of Senior Circuit Judges, Oct. 1946 (Gov't Printing Office, Wash., D. C., 1946)—page 21 S. 1245, 79th Congress

5. In purposing the establishment of uniform standards for qualifications of jurors in Federal Courts "in accord with proposed legislation recommended by the Judicial Conference of the United States", the Congress specifically intended to abolish all disqualifications of women. The recommendations of the Judicial Conference as early as 1942 declared that "women as a group are capable of acting as jurors and should irrespective of state law be called for service in the Federal Courts."

Report of the Judicial conference of Senior Circuit Judges, 1942—Report of Special Committee—page 23

The legislation proposed by the Judicial Conference in the two Congresses preceding that which enacted 28 USC Section 1861 was purposed to permit women to serve as jurors in all Federal Courts.

S. 1623, 78th Congress

S. 1245, 79 Congress

42 Mich. L. Rev. 831, 852, 853—Jury Selection Analyzed, Blume

33 ABA Law Journ. 113, 114—Present Status of Women as to Jury Service, Fisher

6. The exclusion of women is wholly arbitrary and without reasonable basis.

2 Stanford L. Rev. 691, 724-726

2 Ore. L. Rev. 30, 39-42

21 Tenn. L. Rev. 427

Rspectfully submitted,
(S.) JOHN T. McTERNAN,
(John T. McTernan),
(S.) E. B. ELFERS,
(E. B. Elfers),
Attorneys for Defendant.

615 Caples Building,
El Paso, Texas.

AFFIDAVIT OF E. B. ELFERS.

Before Me, the u dersigned authority, a Notary Public, in and for El Paso County, Texas, on this day personally apeared E. B. Elfers, who being by me first duly sworn, upon his oath deposes and says:

My name is E. B. Elfers, and I reside in El Paso, El Paso County, Texas, where I have, as a duly licensed at-

torney, been actively engaged for the past forty-five years in the practice of law in all Courts of the State of Texas, and in the United States Court for the Western District of Texas.

As a practicing attorney, I have become and am familiar with the practice and procedure pursued by the Jury Commissioner for the El Paso Division of the United States District Court for the Western District of Texas, and the Clerk and his deputies in that Court, in selecting the names of persons available for jury service, and placing such names in the jury box from which the names of all persons serving as grand and petit jurors in that Court have been drawn. The practice of using a jury box to hold the names of such jurors has been followed for the past thirty years. During that period, from observation of the persons serving as grand and petit jurors in that Court, and from conversations from time to time with J. N. Phillips, Chief Deputy Clerk, recently deceased, and Laurence E. Stevens, Jury Commissioner, I have become and am familiar with the practice and procedure which has at all times during that period been followed by the Clerk and Jury Commissioner in selecting the names of persons whose names are placed in the jury box as available for grand and petit jury service in that Court. I have learned that the number of names has varied from year to year, the practice being to have not less than 900 names in the box, and that there has never been more than approximately 1100 names in the box. In selecting names and placing them in the jury box, only the names of men have been selected, the Jury Commissioner and the Clerk, or his deputies, having at all times purposely and systematically excluded the names of women solely because of their sex, the Jury Commissioner and Clerk deeming such exclusion to be required by virtue of the provisions of Section 1861, Article 28, United States Code, Article 5

of the Constitution of the State of Texas, and the civil and criminal statutes of the State of Texas enacted pursuant to the constitutional provisions.

I know and can state that for at least thirty years last past the jury box used at the El Paso Division of the United States District Court for the Western District of Texas, and from which the names of all persons serving as grand and petit jurors in that Court have been drawn, has not contained the name of a single woman available for grand or petit jury service, and that during such period no woman has been selected or drawn for grand or petit jury service in that Court, and I know that the names of each and all persons summoned as petit jurors and reporting for service as petit jurors in the United States District Court for the Western District of Texas, El Paso Division, on the 11th day of January, 1954, in the trial of the defendant, Clinton E. Jencks, were drawn from the jury box heretofore described, and that the names of no women appear on such panel of petit jurors.

(S.) E. B. ELFERS,
(E. B. Elfers).

Subscribed And Sworn to before me, the undersigned authority, by E. B. Elfers this 8th day of January, 1954.

(S.) BEATRICE N. GOSSETT,
(Seal) Notary Public in and for El Paso County, Texas.

MOTION FOR CONTINUANCE OR IN THE ALTERNATIVE, CHANGE OF VENUE.

(Filed January 11, 1954).

The defendant, Clinton E. Jencks, respectfully moves for a continuance of the trial date of this cause, or, in the alternative, for a change of venue. In support of his motion defendant shows:

1. This cause was originally set for trial on November 30, 1953 at El Paso, Texas. On or about November 18, 1953 this Court, on its own motion, postponed the date of trial to January 11, 1954. In so doing the Court inquired of the parties whether they would be ready to go to trial on January 11, 1954, and all parties gave assurances that they would be ready to go to trial on that date. The events and occurrences set out below occurred after November 18, 1953 and could not be foreseen by defendant or his counsel.

2. Defendant is now, and since on or about January, 1951, has been, an International Representative of the International Union of Mine, Mill and Smelter Workers, hereinafter called "Mine-Mill." From approximately January, 1951 to approximately May, 1953 defendant was assigned, in the course of his duties as such International Representative, to the area of New Mexico in and around Silver City. At the trial herein the Prosecutor will endeavor to prove that during the year 1950 defendant was an officer of Local Union 890 of Mine-Mill and that said Local Union 890 served as the collective bargaining representative of mine and smelter workers employed in the said Silver City area.

3. (a) On or about November 25, 1953, Honorable Ben Sheppard, Attorney General of the State of Texas, and acting in his official capacity, issued a public statement charging in substance that Mine-Mill was participating in "a master plot from Moscow, aimed at obtaining a strangle hold on Texas mineral, port and petroleum centers" and that this plot was "backed by million dollar slush funds and unlimited support from Moscow". The Attorney General further stated that Mine-Mill and its alleged co-conspirators "are deep red and disloyal" and that "Their tactics are to parade as legitimate and decent trade unions, to attack any opposition as anti-labor."

(b) News accounts of the Attorney General's statement of November 25, 1953, quoting it in part and giving the substance of other portions, were carried in the El Paso Herald Post of November 25, 1953 and the El Paso Times of November 26, 1953. The El Paso Herald Post had and has a daily week day circulation of 48,291 and a Sunday circulation of 64,650. Similar news accounts were broadcast from every radio and television station in the City of El Paso and vicinity on many occasions and at frequent intervals during the daylight and evening hours of November 25, and November 26, 1953. True copies of the news articles contained in the El Paso Herald Post of November 25, 1953 and the El Paso Times of November 26, 1953, are attached hereto, marked respectfully Exhibits "A" and "B" and by this reference are made part hereof.

4. (a) On or about November 27, 1953, Honorable Allan Shivers, Governor of the State of Texas, ordered that the State Industrial Commission conduct an investigation of the charges made by the Attorney General of Texas as set out in paragraph "3" above. At the time he ordered that investigation, Governor Shivers issued a

statement in words or substance that "There is no place in Texas for Communists, period."

(b) News accounts of the Governor's order and statement of November 27, 1953, were carried in the El Paso Herald Post and the El Paso Times of November 28 and November 30, 1953 and were broadcast from every radio and television station in the City of El Paso and vicinity on many occasions and at frequent intervals during the daylight and evening hours of November 27 and November 28, 1953. True copies of the news articles contained in the El Paso Times of November 28, 1953, the El Paso Herald Post of November 28 and November 30, 1953 are attached hereto, respectively marked Exhibits "C", "D" and "E" and by this reference made part hereof.

5. The aforesaid Industrial Commission held public hearings in the course of its aforesaid investigation at Austin, Texas, on or about December 4 and December 5, 1953. At its hearings the Commission took testimony of, among others, persons named Harvey Matusow and John Lautner; Matusow and Lautner are professional informers and witnesses in the service of the Department of Justice; defendant is informed and believes and, placing his statement on that ground, states that Matusow will be the chief witness for the prosecution in this case and that Lautner will also estify on behalf of the prosecution herein. The substance of the testimony of these witnesses before the Mine-Mill are either members of the Communist Party or are "party-liners"; that the defendant Jencks is either a member of the Communist Party or a "party-liner"; that the Communist Party had in operation of a plan of industrial concentration whereby it infiltrates members into basic industry as part of its preparation to overthrow the government by force and violence; that the Communist Party carried on such industrial concentration activities

in the Silver City area of New Mexico and regarded that area as crucial to its program and activities.

6. The substance of the testimony of the witnesses Matusow and Lautner was reported in the El Paso Herald Post and the El Paso Times on December 4th, 5th and 6th of 1953, and was broadcast from every radio and television station in the City of El Paso and vicinity on many occasions and at frequent intervals during the daylight and evening hours of said dates. True copies of the news articles concerning said investigation and the testimony before the State Industrial Commission contained in the El Paso Herald Post for December 1, 3, 4 and 5, 1953, and the El Paso Times for December 6, 1953 are attached hereto, respectively marked Exhibits "F", "G", "H", "I", "J", and "K", and by this reference are made part hereof.

7. By virtue of the foregoing the very issues to be tried in this case, to-wit, whether the defendant was a member of or affiliated with the Communist Party, have been tried in the public press in advance of this trial; the conclusion that defendant is such a member or is so affiliated has been repeatedly communicated to the vicinage in which this case will be tried and in particular to the prospective jurors herein whose names have already been drawn on the panel for this case; and said conclusion has been so communicated through the testimony of the very witnesses who will testify herein, reinforced by the prestige and authority of the Attorney General and the Governor of the State of Texas.

8. By reason of the foregoing, to require defendant to stand trial in El Paso at the present time would deprive him of his right to a trial before a fair and impartial jury, contrary to the Sixth Amendment to the Constitution of the United States, and would deprive him of a fair trial

and due process of law contrary to the Fifth Amendment to said Constitution.

Wherefore, defendant respectfully moves this Honorable Court for an order:

(a) Continuing the trial date herein until such time in the future as will permit the dissipation of the effects of the events and transactions alleged above and summoning a wholly new panel of prospective jurors for the trial at said future trial date; or, in the alternative.

(b) Changing the place of trial to the Southern District of California or such other District as has been unaffected by the evidence and transactions set out above.

This motion and application is not made for purposes of delay only, but that justice may be done.

Respectfully submitted,

(S.) JOHN T. McTERNAN,
(John T. McTernan),

(S.) E. B. ELFERS,
(E. B. Elfers),
Attorneys for Defendant.

615 Caples Building,
El Paso, Texas.

Clinton E. Jencks, being first duly sworn, upon his oath deposes and says: That he is the defendant in the above styled and numbered cause; that he has read over and is familiar with the matters and facts alleged in the foregoing motion for continuance or, in the alternative, for change of venue, and that the same are within his knowledge true, except when stated upon information and brief, and when so stated, affiant believes them to be true.

(S.) CLINTON E. JENCKS.

Subscribed And Sworn to before me, the undersigned authority, by Clinton E. Jencks on this 8th day of January, 1954.

(S.) BEATRICE N. GOSSETT,
Notary Public in and for El Paso County, Texas.

(Seal)

El Paso Herald-Post

The Newspaper That Serves Its Readers

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FINAL EDITION

PRICE FIVE CENTS

UNION LINKED TO COMMIE PLOT

Attorney General Says Reds Plan Coup in Texas

Shepperd Declares Moscow Directs Move To Control Industrial Areas of State

John Ben Shepperd, Texas attorney general, charged today that an El Paso union is linked with two other unions in a Communist-led plot to dominate Texas mineral, port and oil centers.

In a statement issued to The Herald-Post, Attorney General Shepperd lashed out at the International Union of Mine, Mill and Smelter Workers, whose Texas members are concentrated mainly in El Paso.

Mine-Mill, he asserted, has a "definite link" with the Distributive, Processing and Office Workers of America and the International Fur and Leather Workers.

"All three are deep Red and disloyal," Mr. Shepperd said.

"We are beginning to see a master plot from Moscow, aimed at obtaining a stranglehold on Texas mineral, port and petroleum centers. If this grip is established, the vast resources of Texas would be paralyzed on a moment's notice from the Kremlin."

Investigate for Months

"I was warned in January of subversive activity of the Mine, Mill and Smelter Workers," Mr. Shepperd continued. "Agents from my office have been investigating this union for months. It is now clear that the three unions are joined in a mass invasion of Texas, backed by million-dollar slush funds and unlimited support from Moscow.

"Their tactics are to parade as legitimate and decent trade unions, to attack any opposition as anti-labor, and to jump behind the Constitution when asked about their Communistic records.

"We are out to oust them, and with the help of the citizens of this state we can do just that.

1200 Members Here

"The DPOWA has laid low in the national labor organization but their goal is complete domination of organized labor, not only in Texas but in the nation as well. They have joined hands in an unholy alliance with the fur and leather workers and the mine, mill and smelter workers union to achieve this end."

In El Paso Mine-Mill has about 1200 members. They are represented by Local 509 at the American Smelting and Refining Co. Smelter, Local 501 at the Phelps Dodge copper refinery, and Local 903 at the Southwestern Portland Cement Co.

Silverio Alva, business manager for all three locals, when informed of Attorney General Shepperd's charges, said: "That's a strong statement."

Knows of No Ties

Mr. Alva said Mine-Mill in El Paso is not afraid of any investigating the attorney general may be making.

"I know of no Red ties with our local unions," Mr. Alva said. "I do not know of any plot directed from Moscow.

"There are no ties between our local unions and the other two unions Shepperd mentioned. I doubt if there are any ties on the national level. At national conventions of our union I have not seen any representative from the other two unions."

Far from taking orders from Soviet Russia, Mr. Alva said, the El Paso locals of Mine-Mill do not even take orders all the time from their own international union. He said decisions are made by the locals themselves.

In the case of a nationwide strike vote the El Paso locals would feel obligated to go along with the majority, but would not have to strike in all circumstances, Mr. Alva added.

The International Union of Mine, Mill and Smelter Workers was expelled from the CIO for asserted pro-Communist leanings. Mr. Shepperd yesterday accused the DPOWA, which has called a strike in Port Arthur, of starting a long range organizing campaign to control vital Gulf Coast refining centers.

Shepperd Warns Reds After Texas Gulf Ports

By United Press

GALVESTON, Nov. 25.—Texas Attorney General John Ben Shepperd today warned of "what appears to be a Communist plot to take over the principal ports of the Texas Gulf Coast."

Shepperd, in a speech prepared for delivery at a meeting of the Galveston Rotary Club, linked his warning with a discussion of a two-week-old strike, affecting some 21 establishments, at Port Arthur.

Some leaders of the striking union, the Distributive, Processing and Office Workers of America, have been labeled Communist sympathizers by Shepperd.

'Not Local'

"This is not a local situation confined to Port Arthur as the union leaders would have you believe," he said.

A similar charge, aired yesterday by Shepperd, drew a denial from Harry Bush, regional director of the union, at Port Arthur.

"That Communist charge was made a couple of weeks ago. This strike is purely a local situation. There is still nothing to the charge," he said.

However, Shepperd asked, "Why was Port Arthur picked in the first place?"

"I have charged, and I charge again, that Port Arthur was chosen because it is a vital petroleum refining and shipping center. It is not the department stores and cafes they are after," the attorney general said.

'Seek to Control Oil'

"It is the oil they seek to control," he said.

"Why else," he asked, "does the DPOWA have organizers running up and down our own Gulf Coast, hitting such cities as Corpus Christi and Brownsville, and eyeing Odessa and Midland in West Texas?"

"David Livingston, secretary treasurer of the DPOWA, has predicted a chain reaction under which 'each strike we called would be a mass strike with enough workers active from the struck establishments to organize additional workers and spread the strike'."

In Line

"This is in keeping with the union's policy of rule or ruin," the attorney general added.

"Of course, Port Arthur was a 'natural' for the starting point of the chain reaction—but for this outfit Port Arthur wasn't only the starting point. That's where they got off the train for good."

Shepperd said his staff had investigated national officers of the union.

Lists Officers

"We found, first, that President Arthur Osman, Vice President David Livingston, Vice President of the New York District Carl Andren, District Director of Organization William Michaelson, Executive Vice President of the New York District Jack Paley and District Vice President Peter Stein have a long record of pro-Communist activities, friendships and sympathies. These men have stolidly refused under the Fifth Amendment (of the U. S. Constitution) to affirm or deny that they are, or ever have been, members of the Communist party."

Offered Affidavit

However, Shepperd added that Livingston "offered last week to swear under oath that he is not a member of the Communist Party, and that his non-Communist affidavit now on file with the NLRB is truthful and accurate."

"I don't believe that such an oath would suffice. . . instead of an affidavit, my office has propound-

(Continued on Page 2, Col. 6)

E. P. Union Linked With Commie Plot

(Continued from Page One)

ed, on the basis of these men's records, a long list of questions concerning their. . . activities, and this list has been placed in the hands of the DPOWA representatives for submittal to the individuals concerned," Shepperd said.

For sheer partisanship and keen competition, the annual Thanksgiving football game between El Paso and Austin High Schools is without a superior in these parts. May the best team win!

The El Paso Times

Full Leased Wires of The Associated Press (AP)—The United Press (UP)—International News Service (INS)—Members of Audit Bureau of Circulations

El Paso and vicinity—Clear with little change in temperature Thursday. Low in Valley early Thursday 30; in Heights, 36; high, 66.

West Texas—Fair Thursday.

New Mexico—Fair with not much change in temperature Thursday.

73rd YEAR No. 330 ★ ★ ★ EL PASO, TEXAS, THURSDAY, NOVEMBER 26, 1953 22 PAGES IN TWO SECTIONS—PRICE 5 CENTS

Canada Agrees To Spy Case Inquiry

Red-Tinted Unions Hit By Shepperd

Bay City, Texas. (AP)—In sensational charges Wednesday night, Texas Attorney General John Ben Shepperd, charged that Communist dominated unions are engaged in a plot to gain a strangle hold on the industry of Texas.

Shepperd, in a speech before the Junior Chamber of Commerce in Bay City, declared the Mine, Mill and Smelter Workers Union, long known as a left-wing organization, "has been harboring Communists."

"This union," Sheppard said, "has been in Texas several years and we have evidence that its dealings are just as subversive as those of the other two unions discussed previously."

The other unions to which Shepperd referred were the Distributing, Processing and Office Workers of America and The International Fur and Leather Workers Union.

Texas members of the Mine, Mill and Smelter Workers Union are concentrated mainly in El Paso and adjoining New Mexico areas.

Shepperd, in his Bay City speech, detailed a long record of congressional investigations into the actions of the Red-tainted Mine, Mill and Smelter Workers Union.

"We have evidence that indicates this union is linked with the Fur and Leather Workers Union and the DPOWA is what appears to be a master plot to infiltrate the unions of Texas and gain a strangle hold on all the industry of Texas," he said.

Shepperd then added:

"Imagine for a moment what might happen if these three unions are allowed to continue their efforts.

"They have billion dollar slush funds for organizational and political operation. They are practiced in the art of parading as legitimate and decent trade unions. They have learned the trick of attacking any opposition as anti-labor. They are masters in the art of using goon squads to terrorize small business men to agreeing to their demands," he concluded.

SEES 'TESTING GROUNDS'

Earlier in Galveston Shepperd charged that Port Arthur is the "testing ground' 'of a Communist plot to take over the oil industry and the main Texas Gulf Coast ports.

Shepperd said this is the aim of the DPOWA.

He began investigating the union after it called a strike 12 days ago during an organizing drive in Port Arthur.

If present state laws aren't tough enough, Shepperd said, "I intend to ask the governor to submit the matter to the anticipated special session of the Legislature to turn the guns of la won these minions of Moscow."

Shepperd made this charge in a speech at a joint meeting of Galveston County Rotary Clubs.

He said Arthur Osman, the union's president, and David Livingston, its secretary-treasurer, were

(Continued on Page 2, Column 1.)

Page 2

Red-Tinted Unions Hit By Shepperd

(Continued from Page 1)

"named by witnesses as being Communist controlled" in testimony before the Senate judiciary sub-committee on internal security in 1952.

He said other officers of the union have refused to testify whether or not they are Communists.

The union is picketing 22 Port Arthur firms—department stores, hotels and eating places. Most of them are still operating.

Shepperd said that by injunction a few months ago he stopped the International Fur and Leather Workers Union from organizing. He said that union was "described as Communist-dominated by a House committee on un-American activities on Jan. 3, 1940."

The attorney general said he's going to stop the DPOWA organizing at Port Arthur. "Of course Port Arthur was a 'natural' for the starting point. That's where they got off the train for good."

Shepperd was interrupted by scattered applause five times. Afterward he talked to a group of about 30 newspapermen about his strategy for handling the Port Arthur situation. He asked that these remarks be "off the record" but agreed to be quoted on this:

"It is known that organizers of the union DPOWA have contacted and talked with representatives of other union's locals in other towns in Texas."

During his Rotary Club speech, Shepperd departed from his prepared speech to say three high officers of the DPOWA-Osman, Livingston and Jack Paley, executive vice president of the New York district—"are known to have been in Port Arthur during the past three weeks."

He added that Donald Henderson is "reportedly in Texas doing organizational work for the DPOWA" and has, in fact, "been in Galveston during the past 72 hours." He said Henderson is one of the union's officers who have refused to answer questions about possible Communist connections "on grounds his answers might tend to incriminate him."

Shepperd sent 402 questions Tuesday to national officers of the union, asking, among other things, whether they're Communists. The union officers have not commented on the questionnaire.

Shepperd said he has asked U. S. Atty. Gen. Brownell to prosecute them.

He said four other officers of the union have refused to testify whether or not they are Communists.

GOOD MORNING!

Moscow still has the ability seemingly to befuddle Western diplomats. Right now those diplomats are wondering what the Russians are getting at in claims of new secret weapons and in its willingness to meet the West.

The El Paso Times

Full Leased Wires of The Associated Press (AP)—The United Press (UP)—International News Service (INS)—Members of Audit Bureau of Circulation

THE WEATHER

El Paso and vicinity—Partly cloudy and continued mild Saturday. Probable temperature range 44-72 degrees.

West Texas—Partly cloudy Saturday with no important change in temperature.

New Mexico—Partly cloudy Saturday with scattered light showers or snow flurries in northern mountains and northwest portion.

73rd YEAR No. 332 ★ ★ ★ EL PASO, TEXAS, SATURDAY, NOVEMBER 28, 1953 20 PAGES IN TWO SECTIONS—PRICE 5 CENTS

Gov. Shivers Orders Probe Of Suspected Communist Unions

Admitted Spy To Tell About Red Operations

The shocking story of Soviet spy-ring operators in the U. S. will be told for the first time directly to newspaper readers by Elizabeth Bentley, admitted former Soviet spy. The insidious inside operations thus far revealed have brutally awakened Americans to the acuteness of this creeping menace.

ELIZABETH BENTLEY

Is it true vital American defense secrets were passed with impunity to Russia?

"I can attest that they were," says Miss Bentley, formerly one of the most important operatives in this vicious spy network. Miss Bentley names names, describes clandestine operations and tells new facts about the Kremlin-ruled underground in the U. S.

Don't miss this exclusive series

Starting Monday In

The El Paso Times

Austin, (INS) — Gov. Allan Shivers Friday ordered a full investigation of three unions operating in Texas which he said "apparently have Communist connections."

He did so by appointing members to and activating the usually inoperative State Industrial Commission and calling upon it to hear testimony about the alleged Communist domination of the labor organizations.

These are the unions he named to be investigated: The Mine, Mill and Smelter Workers Union, the International Fur and Leather Workers Union, and the Distributive Processing and Office Workers Union of America.

All three have been under heavy fire by Attorney General John Ben Shepperd, who has charged that attempts of the unions to organize membership in Texas is part of a long-range, Moscow-financed plan for a strangle-hold on vital industries operating in the state.

SPECIFIC TARGET

The Distributive Processig and Office Workers Union is the attorney general's current target, and he has charged specifically that it is led by Communists or Communist sympathizers. He quotes documentary evidence that some of the officers of the union, which has been picketing some 22 establishments in Port Arthur this week, have been so identified in congressional hearings, having refused under constitutional immunity to say whether they are or aren't.

In his statement Friday, Gov. Shivers noted that the predecessor organizations of the DPOW once were suspended by the CIO; that CIO President Walter Reuther recently announced the re-admission of this union on a basis of interim affiliation.

"I call upon the state and national officials of the CIO to join with the state government of Texas in eliminating Communist influences in this labor organization," the governor declared.

"I invite the individuals and officers of all Texas labor organizations to co-operate in keeping Communists out of their ranks."

NO PLACE FOR REDS

The chief executive said that although he firmly believes in the constructive principles of organized labor and in the patriotic motives of the Texans who are members of organized labor, there can be no place in Texas organized labor for Communists."

"There is no place in Texas for Communists, period," he added.

The governor named the following members to the industrial commission and announced they would

Clinton Jencks Group Warns Of Prejudice

A warning that El Paso newspapers cannot be expected to give fair play to the trial of Clinton Jencks, International Union of Mine, Mill and Smelter Workers representative, has been broadcast by the Jencks Defense Committee.

Jencks is to go on trial in U. S. District Court on Jan. 11 on a charge of falsifying a non-Communist affidavit required of union officials. The indictment against him accuses him of having been either a member of the party, or affiliated with it, at the time of making the required affidavit in 1950.

In letters sent to a wide mailing list in El Paso, the defense committee, through Rod Holmgren, executive secretary, wrote:

"In less than two weeks, (The letter was prepared before the case was continued) You can expect a barrage of anti-labor headlines in El Paso newspapers. These stories will be coming from the trial of Clinton Jencks, a leader of our union who has been indicted on charges of 'swearing falsely' when he signed a Taft-Hartley affidavit in 1950.

"Jencks has said repeatedly that he signed the required affidavit in good faith when he was president of Bayard Amalgamated District

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"There is no place in Texas for Communists, period," he added.

The governor named the following members to the industrial commission and announced they would meet with him Monday at 10 a.m. to discuss the investigation of the accused unions: C. E. Fulgham (temporary chairman) of Lubbock, a farmer and rancher; William J. Harris of Dallas, president of the Texas Federation of Labor; L. E. Page of Carthage, Texas American Legion commander; Walter Buckner, editor and publisher of the San Marcos Record; and E. G. Rodman Sr., of Odessa, president of the Rodman Oil Field Supply Co.

The commission is vested by state law with broad powers to subpoena witnesses, compel their attendance, to punish for contempt, and to compel witnesses to produce books and records.

Shepperd has gathered considerable documentary evidence which he says proves that some officers of the DPOWA are Communists or Communist sympathizers, which he presumably will turn over to the industrial commission for the investigation.

Meanwhile, the attorney general has propounded 402 questions of his own and asked that four of the officers bring the answers to his office, with sworn statements that they are true.

These questions involve, among other things, alleged membership in the Communist party and associations with known Communists.

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"Jencks has said repeatedly that he signed the required affidavit in good faith when he was president of Bayard Amalgamated District Union, Local 890, Bayard, N. M. We believe the attempt to send him to jail for five years is essentially an attack on our union, which has a long record in the fight against discrimination here in the Southwest.

"We don't expect the papers to observe ordinary journalistic rules of fair play in reporting the trial. So we feel the only way to break through the press curtain is by mail and direct personal contact. That is why we are writing to you."

The letter urged a big turnout for the trial.

"In this way you can weigh the facts for yourself, and exercise your own judgment about what is behind the headlines," it said. "The main thing we urge you to remember, when the headlines begin, is that Clint Jencks has for years been in the forefront of many battles for the simple rights of minorities.

"We are convinced that this — coupled with the fact that he has been an honest labor leader fighting for better wages and conditions — explains the attempt to imprison him."

El Paso Herald-Post

The Newspaper That Serves Its Readers

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HOME EDITION

PRICE FIVE CENTS

SOUTHERNERS IN SUN BOWL?

State Committee Sets Conference On Union Probe

Citizen Investigators To Meet Monday

By United Press

AUSTIN, Nov. 28.—A citizens committee will meet Monday with Governor Allan Shivers to begin an investigation of State charges that three labor unions are trying to strangle vital Texas industry on "orders from Moscow."

Shivers, in a statement yesterday announcing he was calling the committee into being, said the three accused unions "apparently have Communist connections."

He named them as the Distributing, Processing and Office Workers of America, the International Mine, Mill and Smelter Workers Union at El Paso and the International Fur and Leather Workers of America.

The Governor reactivated for the inquiry a State industrial committee first created by the Legislature in 1920 but dormant since it investigated a telephone strike at Odessa, Tex., in March, 1947.

Shepperd Says They're Reds

The unions have been accused by Attorney General John Ben Shepperd as Communist - dominated. Shepperd recently won a court suit to prevent the Fur and Leather Workers from organizing in Texas.

The Mine, Mill and Smelter Workers Union was expelled from the CIO on charges of Communist activity.

Union on Strike

DPOWA is a former CIO affiliate that was expelled for "left wing" policies, but now is in the process of reaffiliation, according to union sources at Detroit.

DPOWA now is engaged in a strike against 22 Port Arthur Tex. firms that set off the present State controversy. The union is attempting to gain recognition as bargaining agent for retail workers. Shepperd claims it is trying to gain control of the huge oil refining industry centered by Port Arthur.

At Chicago, the Foundation for Management Research charged that the CIO planned to merge DPOWA with the Retail, Wholesale and Department Store Union in an effort to "save face" and "take the heat off the CIO."

Sees Politics

Shepperd yesterday called the CIO to investigate the Port Arthur strike to determine if leaders of DPOWA are proven Communists, as we have charged."

At Port Arthur, L. L. Roberts, president of the Sabine Area Council of the CIO, said he was "prone to believe" that pro - Communist charges against DPOWA were inspired more by politics than by actual Communist infiltration. He said CIO was investigating and was doing so before Shepperd called for an inquiry.

Picket Lines Observed

CIO workers at Port Arthur, Roberts said, have "not given one dime" to DPOWA but are "conscientiously" observing picket lines.

In his statement, Shivers said he believed in the "constructive principles of organized labor, and in the patriotic motives of the Texans who are members of organized labor."

Shivers named Farmer-Rancher C. E. Fulgham of Lubbock, Tex., as temporary chairman of the industrial committee whose members he charged with making "such investigation as they deem necessary and report their findings and recommendations to the Governor so that appropriate action may be taken." If necessary, he said, it should recommend passage of new State laws.

Others named to the committee were William J. Harris of Dallas, president of the Texas Federation of Labor: L. E. Page of Carthage, commander of the Texas Department of the American Legion; Wal-

(Continued on Page 3, Col. 4)

Texas Newspapers Face Libel Suit, Says CIO Official

By Associated Press

PORT ARTHUR, Nov. 28. — A Houston newspaper quoted a national CIO official today as saying all Texas newspapers that carried a recent allegation of Communism would be sued for libel.

John Moore, reporting in the Houston Post, said Fred Pieper had told him the New York law firm of Weissman, Cellar, Spaeth and Quinn had been instructed to file the suits.

"I don't know how many newspapers are involved," Moore quoted Pieper as saying.

Pieper is an assistant to executive vice president John Riffe of the CIO.

Lock, Stock, Barrel

Earlier Pieper, speaking before a large union gathering here last night proposed that the Distributive, Processing and Officer Workers of America be taken over, "lock, stock and barrel," by the national CIO. A few hours later, Local 85 of DPOW here voted unanimously to back Pieper's proposal.

Details of the transfer, Pieper said, will be completed tomorrow. He is due to take personal charge of DPOW activities here. Currently, the union—newly organized in Texas and its existence in the state protested by Attorney General John Ben Shepperd — is on strike and picketing 22 firms here.

Says Reds Eased Out

Pieper freely admitted, the Post said, that the DPOW had been dominated by Communists, and said it had been eased out of the CIO several years ago.

Pieper said the union was purged of its Communistic leadership, primarily because of the efforts of two men—Arthur Osman and David Livingston, top DPOW leaders.

Shepperd, in a speech this week in Galveston, referred to both Osman and Livingston as having refused to answer questions before a congressional committee.

Other witnesses, Shepperd said, testified that both Osman and Liv-

State Sets Probe Of Commies

(Continued from Page One)

ter Buckner, editor and co-publisher of the San Marcos Record and past president of the Texas Press Association and E. G. Goodman Sr., of Odessa, president of Rodman Oil Field Supply Co.

The commission has authority in Texas to summon witnesses, issue subpenas and compel attendance as well as compel production of books and records of witnesses. It may punish for contempt.

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The Newspaper That Serves Its Readers

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HOME EDITION

PRICE FIVE CENTS

SOUTHERNERS ACCEPT BOWL BID

Governor Shivers Warns Reds to Stay Out of Texas

Scores Infiltration Of Organized Labor

By United Press

AUSTIN, Nov. 30. — Governor Shivers served blunt notice today "there is no room in Texas for Communists — either in or out of organized labor."

The Governor at the same time triggered a sweeping investigation of charges by Attorney General John Ben Shepperd that Communists, acting under orders from Moscow, are plotting to gain a stranglehold on vital Texas industries through infiltration into certain labor unions.

As the Governor looked on, four of the five members of the Texas Industrial Commission, charged with making the inquiry, were sworn into office by J. E. Hickman, chief justice of the State Supreme Court.

Union Singled Out

The Governor singled out for special attention the Distributive, Processing and Office Workers of America, a union now conducting a strike at Port Arthur.

Shepperd has alleged that the union is Communist-dominated.

Shivers suggested that the commission call on the attorney general for legal assistance but he cautioned that the investigation should block "even an attempted blow...at organized labor."

The Governor commended the "thousands" of loyal Texans who are members of organized labor, and then suggested the commission members be about their business.

"I bid you Godspeed," he said.

Group Reactivated

The industrial commission, created by the Legislature in 1920 but long dormant, was re-activated last week by the governor.

In a proclamation, Shivers directed that the agency "make such investigation as they deem necessary and report their findings and recommendations to the Governor so that appropriate action may be taken."

The Governor said if the commission found present laws were inadequate, members should make recommendations for further legislation.

In a statement, the Governor singled out three unions as "apparently having Communist connections."

And Mine, Mill

They were the Mine, Mill and Smelter Workers Union, the International Fur and Leather Workers Union, and the Distributive, Processing and Office Workers Union of America.

The DPOWA is now in the third week of a strike at Port Arthur against 22 local firms, and is expected to be the initial target of the commission inquiry.

Hearings, open to the public under the law, may be held where the commission decides.

Members are armed with the power to call witnesses, compel their attendance and direct that they bring records and other evidence. The commission can also punish for contempt of a commission summons.

Shepperd, who launched the original attack against the DPOWA, tangled previously with the Fur and Leather Workers Union.

The attorney general successfully prohibited that group from organizing in Texas until they complied with a law requiring that labor organizers first register with the secretary of state.

63

El Paso Herald-Post

The Newspaper That Serves Its Readers

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FINAL EDITION

PRICE FIVE CENTS

EX F

Shivers Invites Union Officers To Red Hearings

Probing Alleged Communist Control

By United Press

AUSTIN, Dec. 1.—A specially revived commission will investigate alleged Communist control of three independent labor unions in day and night hearings beginning Friday.

The five-member Texas Industrial Commission was appointed by Governor Shivers under terms of a 1920 law. Shivers watched as the commissioners were sworn in yesterday and said:

"There is no room in Texas for Communists—either in or out of organized labor."

Invites Officers

The commission has no power to subpena persons outside the state, so it invited officers of the unions—the Mine, Mill and Smelter Workers, the International Fur and Leather Workers, and the Distributing, Processing and Office Workers—to appear along with three former Communists.

Attorney General John Ben Shepperd, who will serve as counsel for the commission, said those invited were Harvey Matusow, New York, and Economics Professor Louis Budenz of Fordham University, both ex-Communists; Mat Ovetic of Pittsburgh, former Federal Bureau of Investigation undercover agent in the Communist Party; and Ben Gold, New York, president of the Leather Workers; Arthur Osman, David Livingston, Robert Burke and Jack Pales, all officers of the Office Workers Union from New York; John Clark, Englewood, Colo., and Maurice Travis, Denver, officers of the Mine, Mill and Smelter Workers.

Stems From Warning

The investigation stemmed from a warning by Shepperd that there was a "Moscow-directed" plot to seize control of vital Texas industries. He spoke out after the OPOWA struck against 22 firms at Port Arthur, in Texas' "Golden Triangle," an industrial complex where many oil refineries and chemical plants are located.

C. E. Fulgham, Lubbock rancher, was elected chairman of the commission.

Fulgham said the commission would try to draw up recommendations for changes in Texas labor law, if it finds any are needed.

—United Press Telephoto

SWORN IN—Under the watchful eye of Governor Allan Shivers, right, Chief Justice John E. Hickman of the Texas Supreme Court (next to Shivers) swears in four of the five members of the Texas Industrial Commission in Austin. The Commission will investigate Communist influence in labor organizations. Committee, left to right: Walter Buckner, San Marcos; E. G. Rodman Sr., Odessa; L. E. Page, Carthage, and C. E. Fulgham, Lubbock.

Ex G

64

El Paso Herald-Post

The Newspaper That Serves Its Readers

VOL. LXXIII. NO. 289 — EL PASO, TEXAS, THURSDAY, DECEMBER 3, 1953 — DELIVERED BY CARRIER 30c PER WEEK

SCRIPPS-HOWARD

HOME EDITION

PRICE FIVE CENTS

Union Probers List New Witnesses

By United Press

AUSTIN, Tex., Dec. 3.—Another former Communist and a consultant for the Federal Bureau of Investigation have agreed to testify before a Texas commission investigating allegations of Communist domination of unions, it was reported today.

C. E. Fulgham of Lubbock, chairman of the five-man Texas Industrial Commission which will open hearings here tomorrow, said Maurice Malkin of Brooklyn and John Lautner of Washington would appear.

Earlier, he announced Matt Cvetic, Pittsburgh, who entered the Communist party for the FBI, and former Red Harvey Matusow of New York would testify.

Fulgham identified Malkin as a founder of the Communist Party in this country in 1919. In addition, Fulgham said he had been connected with all three of the unions under investigation: The Distributive, Processing and Office Workers, the International Fur and Leather Workers, and the Mine Mill and Smelter Workers.

Lautner is a consultant for the FBI and is a former member of

(Continued on Page 5, Col. 3)

Union Probers List New Witnesses

(Continued from Page One)

the Communist party, the commission chairman said.

New CIO Labor Union Formed in Port Arthur

By United Press

PORT ARTHUR, Tex., Dec. 3.—A newly-formed CIO labor union was formally chartered here last night and temporary officers elected amid indications it would not have the unanimous support of other labor groups in the area.

Most CIO units, including the powerful Oilworkers International local here and the strong maritime union, have pledged support of the new union which has struck 22 Port Arthur businesses in its move to be recognized as bargaining agent for retail clerical and office workers.

But George C. Cantrell, president of the Port Arthur Trades and Labor Council, made no mention of supporting the new group today and said "they have their plans and we have ours."

Other units which have pledged support include Communications Workers, the Newspaper Guild in Beaumont, both CIO, and an AFL insurance workers local.

El Paso Herald-Post

Ex H

The Newspaper That Serves Its Readers

VOL. LXXIII. NO. 290 — EL PASO, TEXAS, FRIDAY, DECEMBER 4, 1953 — DELIVERED BY CARRIER 30c PER WEEK

HOME EDITION — PRICE FIVE CENTS

A Big City Without Daily Newspapers...What It Is Like

New York Stores Are Hit Hard...People Hungry for News...Theaters Suffer

Special to The Herald-Post

NEW YORK, Dec. 4.—New yorkers are discovering that they don't have to be hungry to experience a famine.

A newspaper strike—a week old tomorrow—has altered the town's outlook, damaged its business and bewildered its inhabitants.

A strike by union photo-engravers closed six of the city's seven major daily newspapers at 7 a. m. last Saturday. Included was the New York World Telegram and Sun, a Scripps-Howard Newspaper.

The seventh newspaper, the morning Herald-Tribune, was not immediatley affected by the strike since it has no engraving plant of its own but has its work done in a commercial shop. The Herald-Tribune, however, shut down voluntarily when the strike was two days old, charging that its continued publication was being "used as an instrument to obstruct normal collective bargaining."

The strike closed another paper today.

The Long Island Star-Journal suspended publication when stereotypers refused to handle advertising from six New York newspapers closed by strike.

Although it is possible to publish a near-normal newspaper without photo-engravers, the city's huge printing plants were stilled when other union members refused to cross the engravers' picket lines.

Consequently, 20,000 newspaper employes are jobless and more than 5,000,000 newspaper readers are hungrily eying empty newsstands.

The effect of the strike is actually two-sided. One is grim and depressing. The other verges on the hilarious.

Next to the papers and their employes, the hardest hit are the department stores. With shelves packed high with Christmas goods, and more coming in from warehouses and factories, the retailers are caught without their usual medium for telling the public about holiday wares.

The stores have bought time on radio and TV. They have placed ads in suburban papers but they are not kidding themselves. Women's Wear Daily, the retailers' bible, bluntly stated that, "traffic in the stores has fallen off," and that "merchants are singing the blues."

The trade paper said that store owners and promotion men had "clutched" at radio and TV time but that "results so far had been generally disappointing."

To most merchants the reason is obvious. Mma likes to compare Gimbels and Macy's, Saks Fifth Avenue and Altman. If she is watching a pitch on TV for Lord and Taylor, she may never know what Best's is offering.

One of the biggest stores put it this way: "The ads in the newspapers lead the customers to our goods. But now they're not getting above the street floor."

It isn't the department stores alone that are suffering. Car dealers are jockeying with the stores for time on the air to move 1953 models before the 1954 chariots come out. Small speciality shops report their business has been crippled by the strike.

On the lighter side, New Yorkers have had to alter many of their habits. Great newspaper readers normally, they have turned to magazines and books. Sales of both, particularly paper back books, have skyrocketed. People who haven't read a book since senior English class are finding them intriguing.

But these are escapist methods only. What New Yorkers want are newspapers. Because of this, amateur smugglers and bootleggers have sprung up all over town.

Commuters bring papers in from out of town. Before the day is done they are frayed and dog-eared, passing from hand to hand. Some New Yorkers have become aware, as if for the first time, of the existence of cities like Philadelphia, Newark, White Plains, Stamford and Bridgeport.

In a car on a New Haven Railroad commuter train the other night riders were sitting disconsolately looking out of the windows, reading books or sleeping. A traveling salesman came in with a Philadelphia paper. Before the train reached its destination the paper was in shreds but several dozen commuters were happy.

In the subways, signs of psychiatric damage to riders are already apparent. Men and women sit across from one another in embarrassment, seeing scores of faces staring back at them. Before this they had been nothing but legs. The old protective newspapers are missing. Women who used them to shield themselves from the close scrutiny of straphangers feel like goldfish.

New Yorkers can watch television, unaffected by the strike, but without papers they don't know what's on the video bill of fare.

Broadway frankly has the horrors. New movies arrive at theaters with no advance fanfare. A new musical musical, Kismet, is opening. It has Alfred Drake, who helped make "Oklahoma," a hit, in the cast. Those in the know say it should be a success. But without dramatic reviews in the papers management wonders how to sell tickets.

The issues of the strike briefly revolve around a "package" deal involving wages, hours, holidays and welfare benefits. Publishers have offered a "package" worth $3.75 weekly. The photo-engravers asked one worth $15. When agreement was not reached the publishers offered to submit the dispute to impartial arbitration. This the engravers twice refused. Subsequently the union's demands have been cut in half and negotiations are continuing.

4

Protest Ascarate Tax Rates

Probers Hunt Reds in Texas Unions

Shepperd Links Three Groups With Commies

State Commission Opens Hearings

By United Press

AUSTIN, Dec. 4.—Attorney General John Ben Shepperd charged today three independent labor unions are united in the cause of Communism as the State of Texas launched an investigation into alleged Red domination of the organizations.

The unions are the Distributive, Processing and Office Workers of America, the Mine, Mill and Smelter Workers and the International Fur and Leather Workers.

Shepperd aired his accusations before the Texas Industrial Commission as the five-member agency prepared to hear testimony by four ex-Communists, one of them a former undercover agent for the Federal Bureau of Investigation.

Beyond Question

"We plan, to establish beyond question that Texas' vital natural resources are the goal, that the organizing activities of the three unions are centered in the mineral, petroleum and port areas of Texas, that other unions, honest Texas labor organizations, are being imposed upon to assist and further this conspiracy," he said.

Harvey Matusow, an ex-Communist from New York, was docketed as the first witness in the hearing, scheduled to continue in day-and-night sessions through Sunday.

Tells of Threats

Shepperd, as counsel for the commission, said Matusow was thrown out of the Communist Party as an "enemy agent" after furnishing information to the FBI.

The attorney general revealed at the same time his attacks on Communism have provoked profane and abusive telephone calls from

(Continued on Page 2, Col. 4)

Probers Hunt Commies In Three Texas Unions

(Continued from Page One)

anonymous persons. He said the calls would not deter him in his fight.

"They didn't bother me," he said.

Shepperd briefly backgrounded his accusations against the three unions as the commission opened its hearing in a Senate committee room, a drab, bare-walled room on the second floor of the Capitol.

"This hearing is a result of charges that the Distributive, Processing and Office Workers Union of America, the International Fur and Leather Workers Union and the International Mine, Mill and Smelter Workers Union are Communist-led and Communist-dominated," he said.

Would Show Histories

"We intend to show that the Fur and Leather Workers, the Mine, Mill and Smelter Workers and the Office Workers have long histories devoted to the achievement and the purposes of the Communist Party. That when Russia changed courses —not once, but hundreds of times —so did these unions."

"Although these three unions have claimed that they have cleaned house, we shall show that their officials have steadfastly refused to co-operate with any governmental investigating agencies. That as late as July 6 of this year, officials have refused to deny that they were or are now members of the Communist Party, and have thus far failed to answer questions regarding their loyalty which were submitted by my office."

Shepperd last week submitted a list of 402 questions to officers of the DPOWA. He asked that they be answered under oath.

'Sordid Records'

"We intend to show that the three unions charged with Communist domination are now led by men with full and sordid records of allegiance to the Communist Party, and that the present leaders of these unions have not, in fact, renounced that allegiance or swerved from their former aims of furthering the cause of Communism in this nation," he said.

Shepperd said he would introduce evidence linking nine officials of the DPOWA with "actual membership in the Communist Party or membership in Communist-front organizations."

He said similar evidence would be introduced on three officers of the Fur and Leather Workers Union, and three officials of the Mine, Mill and Smelter Workers.

'Trying to Get Foothold'

"We shall prove that these three unions are now in Texas or trying desperately to come into this state," he added.

Shepperd tangled originally with the Fur and Leather Workers Union. In a court battle, he successfully restrained the union from organizing in Texas on grounds officers had failed to comply with a labor registration law.

He previously attacked the DPOWA as Communist-dominated after that union called a strike against 22 Port Arthur establishments in an organizing campaign in the Gulf Coast city. Since that time, the CIO chartered a local purportedly succeeding the Distributive group. The strike continues.

'Kept Membership Duped'

"We shall show that the three unions have kept their membership duped and blinded to the real aims and purposes of the union, have sought to enter Texas as a decent labor union with a clean public record," he said.

"We shall establish," Shepperd added, "that these three unions are connected by their communistic ties, that they are allied by a common cause, that their cause is the cause of Communism, and that such cause is a threat to the citizens of Texas."

Charge of Plot

The charge of a plot was called "irresponsible" and "ridiculous" by O. A. McKnight, president of the CIO Oil Workers union. McKnight said the investigation was "an attempt to poison the minds of the people against unionism."

The attorney general, meanwhile, answered other accusations that the investigation was prompted by political ambition on his part by announcing at Austin last night that he would not be a candidate for governor next year. Shepperd is serving as counsel for the Texas Industrial Commission.

The four ex-Communists who accepted invitations to appear before the commission were Maurice Malkin, Brooklyn; John Lautner, Washington; Harvey Matusow, New York, and Matt Cvetic, Pittsburgh.

Worked With Communists

Malkin was identified as a founder of the U. S. Communist Party; Lautner as an FBI "consultant;" and Cvetic as an FBI plant within the Communist Party.

Seven labor leaders, active in the three unions under especial investigation, also were invited to appear. The commission has no subpena power for non-residents of Texas and it was not known if any of them would testify.

They were Ben Gold, president of the Leather Workers; Arthur Osman, president, David Livingston, secretary-treasurer, Vice President Jack Paley, and Organizational Director Robert Burke, all of the DPOWA, and President John Clark and Secretary-Treasurer Maurice Travis of the Mine, Mill and Smelter Workers union.

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THE WEATHER

El Paso and vicinity—Mostly cloudy with light showers Saturday morning. Also windy and cooler with blowing dust. Probable temperature range 40-60 degrees.

West Texas—Saturday mostly cloudy turning colder in the Panhandle, South Plains and west of the Pecos Valley.

New Mexico—Cloudy Saturday. Snow in the mountains and showers or snow flurries in the south.

73rd YEAR No. 339 ★ ★ ★ EL PASO, TEXAS, SATURDAY, DECEMBER 5, 1953 22 PAGES IN TWO SECTIONS—PRICE 5 CENTS

EP Red 'Way Station,' Ex-Communist Reveals

Austin. (UP) — An ex-Communist, booted from the party as an "enemy agent" after cooperating with the FBI, testified Friday night El Paso is a way station in Communist courier operations.

The witness, Harvey Matusow, fingered the border city as members of the Texas Industrial Commission launched a probe of alleged Communist infiltration into three independent labor unions.

Matusow, 28 - year - old former Communist Party worker, was the first of four ex-Communists scheduled to be heard by the commission in day and night sessions running through Sunday.

As he ended 1 hour and 19 minutes of testimony, the commission called a recess and moved the hearing to the House of Representatives chamber. The session started in the cramped quarters of a Senate committee room.

The three unions under fire for alleged Communist domination are the Distributive, Processing and Office Workers of America; the Mine, Mill and Smelter Workers and the International Fur and Leather Workers.

Matusow, nattily dressed in a dark blue suit and sporting a figured light blue tie, said officers of all three unions were at least Red sympathizers.

The 28-year-old former New Yorker, now a resident of Santa Fe, N. M., said Texas figures prominently in Communist plans.

He said that prior to being kicked out of the Communist Party in 1950, he discussed Texas' part in overall party planning with a man he identified as Edward L. Hardy.

Hardy, he said, was "the head of the Communist Party in Texas at that time."

CONSIDERED IMPORTANT

Texas, Matusow said, "was considered quite important" from the standpoint of industry, natural resources and Gulf Coast ports.

He said he also discussed El Paso—"that is, the use of it...they go through there in courier operations."

The city, Matusow said, was large enough, with enough people, to make a border crossing relatively easy for a courier.

He said Hardy left Texas "maybe 14 months ago."

In his testimony, Matusow specifically named David Livingston, DPOWA secretary-treasurer; Ben Gold, president of the Fur and Leather Workers, and Maurice Travis and Clinton Jencks, officials of the Mine, Mill and Smelter Workers, as being party-liners.

Matusow, who worked at one time as a switchboard operator in Communist party headquarters in New York, said, "I have seen David Livingston at Communist

(Continued on Page 6, Column 4)

Red Couriers Travel Through EP

(Continued from Page 1)

party headquarters in meeting with Communist party officials."

In answers to questions from Hugh Lyerly, an assistant attorney general, Matusow said he had not only been a member of the Communist Party but listed four Red-front organizations with which he also was affiliated at one time.

These ranged from Communist summer camps to a cultural song group.

The camps, he told the commission, were a "Communist gimmick," aimed at enticing "young liberals" into the party under the guise of offering them a cheap vacation.

ACCUSES UNIONS

Earlier, Attorney General John Ben Shepperd keynoted the hearing with an accusation that the three controversial unions were joined in a Communist conspiracy.

Other ex-Communists, kept under wraps until called before the commission, were waiting to testify.

Pickup 7th par. They are

They are Maurice Malkin of Brooklyn; John Loutzer of Washington, and Matt Cvetic, Pittsburgh, a former Communist sleuth for the FBI.

The hearing was conducted in a drab, bare-walled, almost cell-like Senate committee room on the second floor of the capitol.

There were seats for only 25 spectators. All were filled. Other spectators crowded to the doorway.

C. E. Fulgham, a lean, soft-spoken Lubbock rancher, called the commission to order as chairman of the five-member group. Flanking him were the other four members of the commission: William J. Harris of Dallas, president of the Texas Federation of Labor; L. E. Page of Carthage, state commander of the American Legion; Walter Buckner, co-publisher of the San Marcos Record, and E.G. Rodman of Odessa, president of an oil field equipment supply company.

STATEMENT IS READ

As the hearing opened, Harris read a statement agreeing that "Communist infiltration into any labor union anywhere in this country is a dangerous and deplorable situation, and no patriotic, freedom-loving citizen would condone it."

However, he referred to a recent strike by members of the Distributive, Processing and Office Workers Union at Port Arthur and urged that the issues in that controversy first be determined.

"Then if it appears that the Communist Party has subverted the aims of the union responsible for the strike activities for its own purposes, let us fearlessly bring those facts to the attention of the public. But, on the other hand, if it appears that the union and the employes involved in the dispute have a legitimate controversy over wages, hours of employment or other working conditions, and that Communism is not involved, let us just as fearlessly so advise the people of Texas."

NEW LOCAL CHARTERED

The DPOWA, attacked by Shepperd as Communist dominated, has since been supplanted at Port Arthur by a new local, chartered by the CIO.

Fred C. Pieper, a national officer of the CIO, wired Fulgham expressing his desire to appear before the commission Sunday.

"We feel that you should be advised of the fact that local 85, DPOWA, has been dissolved and its representatives are no longer in Port Arthur but have returned to their regular assignments. The national CIO has granted a local industrial charter No. 1814 to all the former members of DPOWA 85. The new local union has taken over the strike and is at this time administering the strike."

Some 22 Port Arthur establishments are involved.

Shepperd, as counsel for the commission, keynoted the inquiry with the accusation all three unions are united in the cause of Communism.

"We plan to establish beyond question that Texas' vital natural resources are the goal, that the organizing activities of the three unions are centered in the mineral, petroleum and port areas of Texas, that other unions, honest Texas labor organizations, are being imposed upon to assist and further this conspiracy," he said.

Sharks hunt by their sense of smell.

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Ex-Red Says Texas Main Concentration Point for Commies

Probers Hear Of Party Plot To Use Unions

Labor Groups Called Tools of Subversives

By United Press

AUSTIN, Dec. 5.—A former Communist testified today that Texas ranks with "Alaska, Pearl Harbor and California" as a main concentration point of the Communist Party in the United States.

Maurice Malkin, who joined the Communists as a charter member of the party in this country in 1919 and left it in 1937, told the Texas Industrial Commission that Texas "is now considered one of the main points of concentration in the United States."

As the State of Texas attempted to pin a Red tag on three independent labor unions, the 53-year-old native of Russia warned that Communists will "lie and cheat . . . they'll perjure to gain their ends."

Ports First Targets

"In the early '30s Texas was not considered too important. There were not many basic industries," the 53-year-old Malkin testified.

The strategic points at that time were the ports of Galveston and Port Arthur.

Communists pressed their influence through the "Marine Workers," he said.

"During the war period Texas was taken into more serious consideration" with its industrial growth.

Could Poison Cattle

The Communist aim, he said, was to concentrate in basic industries—oil, metals, transportation and allied industries.

But agriculture, Malkin said, also played an important part.

"The Communist Party also would concentrate in the cattle section," he warned.

"In time of war they could poison the cattle, cut off the meat supplies to the Armed Forces," he explained.

He Reads a Lot

"Do you know of any specific Communist activity now being conducted in Texas?" C. E. Fulgham, the commission chairman, asked.

"Not at first hand," Malkin answered.

"But I do by reading Communist literature and from other sources. Texas is actually one of the points considered at the last secret meeting of the Central Communist committee, held a few weeks ago in Sullivan County, New York."

Texas ranks, he said, "with Alaska, Pearl Harbor and California"

(Continued on Page 9, Col. 1)

Ex-Red Tells Of Commie Plot In Texas Unions

(Continued from Page One)

as a main point of concentration.

The three unions under fire are the Distributive, Processing and Office Workers of America, the International Fur and Leather Workers and the International Mine, Mill and Smelter Workers.

Malkin, reaching back into his active Communist days, tagged officers and active members of all three unions as party members.

He pointed out that Communist domination of a union did not mean that a majority of the membership belong to the party. However, the union could be controlled by its Red leadership.

Communist Party members of the unions, Malkin said, "carry out strictly to the letter party orders and policies for control of trade unions . . . to finance the Communist Party and use trade unions as a front. . . as a tool for the Communist Party and for every one of the Communist purposes."

The stocky, naturalized-American testified previously he left the Communists after realizing the ultimate aim of the party was to "use trade unions to overthrow the Government."

Malkin, of New York, and Harvey Matusow, 27, a former New Yorker who now lives in Santa Fe, N. M., were the first two witnesses before the Texas Industrial Commission, which opened a three-day hearing yesterday.

Texas Important to Reds

Matusow said the Communists thought Texas was important because of its industry, natural resources and Gulf Coast ports.

The commission was appointed by Texas Governor Allan Shivers to investigate charges of Communist domination of the Distribution, Processing and Office Workers of America, the International Mine, Mill and Smelter Workers, and the International Fur and Leather Workers Unions.

The investigation was ordered after Texas Attorney General John Ben Shepperd charged there was a "Moscow directed" plot to seize control of Texas industry.

Shepperd Opens Hearing

Shepperd opened the hearing by charging the three unions were joined in a Communist conspiracy.

One of the commission members, Texas Federation of Labor President William J. Harris, read a statement at the start of the hearing.

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"Communist infiltration into any labor union . . . is a dangerous and deplorable situation, and no patriotic freedom-loving citizen would condone it," Harris said.

E. P. Red Gateway

Matusow was the first witness. He said he was a Communist until 1950, and once operated a switchboard at the party's New York headquarters.

Matusow said officers of all three unions under investigation were, at least, "Red sympathizers."

The former Communist said El Paso was used as a port of entry by Communist couriers trying to get into the United States. The city was large enough, he said, to make it relatively easy for a courier to cross the border.

Malkin discussed only the DPOWA Friday night. He identified David Livingston, secretary-treasurer of the union, and four other officials as Communists.

In addition to Livingston, Malkin named DPOWA President Arthur Osman, Organizational Director Robert Burke, Vice President Jack Paley and Donald Henderson, whom he said was an organizer for Local 65 in New York, as members of the Communist Party.

Matusow's testimony was more specific about Communist influences in Texas.

He said, before he left the party in 1950, he talked with a man he knew as Edward L. Hardy, who was the head of the Communist Party in Texas at that time." He said Hardy left Texas "maybe 14 months ago."

Matusow also named Livingston as a Communist. In addition, he said he knew Ben Gold, president of the Fur and Leather Workers, and Maurice Travis and Clinton Jencks, officials of the Mine, Mill and Smelter Workers, were partyliners.

Members of the commission, in addition to Harris, are Chairman C. E. Fulgham, a Lubbock rancher, L. E. Page, Carthage, state commander of the American Legion; Walter Buckner, co-publisher of the San Marcos Record, and E. G. Rodman, Odessa, president of an oilfield equipment company.

After Harris denounced Communism in unions, he referred to a strike against 22 stores now in progress at Port Arthur. The strike was started by a local of DPOWA, but that local was dissolved and the CIO chartered another union, which continued the walkout.

Harris said the issues in that strike should be determined first.

TESTIFIES—General scene at the first meeting in Austin of the Texas Industrial Commission, which is investigating alleged Communist leadership in three national labor unions. Harvey Matusow (arrow), who was expelled from the Communit party for giving information to the Federal Bureau of Investigation, was the first witness. Seated around the table are members of the Commission.

E & K

The El Paso | Paso Times

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73rd YEAR No. 340 ★ ★ ★ EL PASO TEXAS, SUNDAY, DECEMB EL PASO TEXAS, SUNDAY, DECEMBER 6, 1953 108 PAGES IN 7 SECTIONS—PRICE 15 CENTS

GOOD MORNING!

Sen. Hennings, Missouri Democrat, said at a Jefferson-Jackson Day dinner in Midland that Democrats in Congress must support the GOP program for security of the nation. What else is there to do?

THE WEATHER

El Paso and vicinity—Fair and continued cold Sunday. Probable temperature range 20-48 degrees.

West Texas—Fair Sunday.

New Mexico—Generally fair Sunday.

El Paso-Silver City Area Named As Crucial Point In Red Strategy

Austin, (UP)—Texas and the El Paso-Silver City, N. M., area was pinpointed Saturday night as a keystone of Communist strategy by two former party members as authorities probed allegations of a Red conspiracy to infiltrate the state's basic industries.

John Lautner, of Washington, D. C., a Communist Party leader from 1929 to 1950 and now a consultant for the U. .S Department of Justice, joined previous witnesses in outlining Red strategy before the Texas Industrial Commission.

"Watch your key industries—chemicals, shipping and oil," he warned. "That is the direction of the penetration."

"Texas does not stand alone—it is the part of the Communist Party of the United States and part of its plans," he said.

Following Lautner, the commission heard brief testimony by Asa Bowen, police chief at Dumas, Texas, who related his experiences as a former official of the Mine, Mill and Smelter Workers—one of three independent unions under fire from Attorney General John Ben Shepperd as being Red-dominated.

JOINED UNION

Bowen said he joined the local in 1943 or 1944, became its president four nights after joining, and rose to presidency of the district council two years later.

He said it slowly dawned on him that he had been picked for rapid promotion because of his wide range of friendships with both Anglo and Latin-American groups in his home town of Silver City, N. M.

He said higher union officials considered him a "Red baiter" and finally gave him the choice of "getting in line" or getting out of the union. He got out in 1946.

"Are the conditions you have described in Santa Rita and Silver City the same in El Paso?" asked Asst. Atty. Gen. Willis Gresham.

"I know them to be," replied Bowen.

He said use of an amalgamated local in El Paso permits control of all the locals in the area by four or five men "if they are smart enough—and they are."

The hearing then recessed until 9 a. m. Sunday, when Matt Cvetic is scheduled to testify. Cvetic was an undercover agent for the FBI while a member of the Communist party.

OTHER UNIONS ACCUSED

The other unions under attack by Shepperd are the Distributive, Processing and Office Workers Union and the International Fur and Leather Workers Union.

Lautner lent a cloak-and-dagger air to the hearing when he sharply declined to give his residence address in Washington. Previously, he had told the commission's stenographer his address at the Department of Justice, including room and post office box number.

"Will you give us your resident address?" he was asked.

"My life has been threatened," the former Communist snapped. "I gave you a mailing address. That is my address," he added.

Lautner joined previous witnesses in branding all three unions under inquiry as Communist-dominated. He named many officials or active members of the unions and said he was personally acquainted with them.

He named no Communists as now operating in Texas.

KNOWS REDS

However, he said he knew Communists were in the state. He explained that in 1949, Brooklyn Communists sent six portable mimeograph machines to Texas Communists.

"They were the kind to be used in underground work," he explained.

Shepperd asked Lautner if he knew to whom the mimeograph machines were sent.

"I don't know," he answered.

Earlier, Maurice Malkin, the second former Communist to be heard in the inquiry, warned that Texas ranks with Alaska, Hawaii and California as "one of the main points of (Communist) concentration in the United States."

Pickup 6th: Gov. Allan

Gov. Allan Shivers ordered the investigation when Shepperd charged that a DPOWA-sponsored by a new CIO-chartered local, establishments was part of the Communist conspiracy. The DPOWA has since been supplanted by a new CIO chartered local, but the strike continues.

MEMBER PROTESTS

Commission member William J. Harris, president of the Texas Federation of Labor (AFL), protested, meantime, that "neither of the witnesses so far presented has placed any Communists or Communist conspiracy in Texas or in the Port Arthur labor dispute."

The commission, Harris said, was exceeding its authority.

"Perhaps there is need for an investigation of Communism in Texas, but I reiterate my position that the Texas Industrial Commission is not the appropriate body for such an investigation," he said.

The law, Harris added, limits commission authority to "controversies between employers and employes."

"It was not news to me, nor to millions of other Americans, to learn about Ben Gold (president of the Fur and Leather Workers union). That is public knowledge and has been for years. And the same goes for a long list of other Communists mentioned by the witnesses.

"But Ben Gold and others identified are not in Texas. So far as I can determine, the so-called unions with which they are connected are barely in Texas at all. And the evidence so far presented has not identified any Communists working in Texas, even in this locals," he said.

Malkin, a stocky, native-Russian, fingered various officers or active members of all three unions as Communist party members.

In previous testimony, Malkin said he joined the Communists as a charter member of the party in 1919 and left it in 1937 because Communists wanted to use "labor unions to overthrow the government."

"If the Communist Party wanted to come into Texas, what better vehicles can you think of than these three unions?" Shepperd asked.

"There are no better vehicles. These three unions would be the best vehicles. They are the most important ones if they (the Communists) wanted to penetrate the state," Malkin answered.

NO PRESENT ACTIVITY

"Do you know of any specific Communist activity now being conducted in Texas?" C. E. Fulgham, a Lubbock rancher and chairman of the commision, asked.

"Not at first hand. But I do by reading Communist literature an from other sources. Texas is actually one of the points considered at the last secret meeting of the central Communist committee, held a few weeks ago in Sullivan County, New York," he answered.

Texas, he said, ranks with "Alaska, Pearl Harbor and California" as a main point of concentration.

He referred to the strategic importance of Alaska—because of its location—in time of possible war with Russia. His mention of Pearl Harbor, a military installation in Hawaii, was used in apparent reference to the entire island group.

(Continued on Page 11-A, Col. 3)

(Continued from Page 1)

Reds Eye Industries In Texas

Communists Denounce Atrocity Resolution

Tokyo, (INS) — Communist Radio Peiping Sunday bitterly denounced the U. N. General Assembly's anti-atrocity resolution and characterized the world organization as "the lowest possible instrument of the U. S. for carrying on the cold war."

The Communist broadcast asserted that the resolution "was supported by other countries only under U. S. pressure."

COMPLETE TRANSCRIPT OF EVIDENCE.

In the District Court of the United States in and for the Western District of Texas, El Paso Division.

United States of America,
vs. Criminal No. 54013.
Clinton E. Jencks.

Be It Remembered, that on January 11, 1954, the above entitled and numbered cause came on for trial before the Honorable R. E. Thomason, a United States District Judge in and for the Western District of Texas, at El Paso, Texas; during the trial of which cause the following evidence was introduced and proceedings had in connection therewith:

Appearances:

For the Government: Mr. Joseph J. Alderman, Special Assistant to the U. S. Attorney General Washington D. C. Mr. Charles F. Herring, United States Attorney for the Western District of Texas, Austin, Texas. Mr. Holvey Williams, Ass't U. S. Attorney, El Paso, Texas. Mr. Francis C. Broddus, Jr. Ass't U. S. Attorney, El Paso, Texas.

For the Defendant: Mr. John T. McTernan, (Margolis, McTernan and Branton), Los Angeles, California. Mr. Nathan Witt, New York, N. Y. Mr. E. B. Elfers, El Paso, Texas.

A jury was empaneled, selected, and sworn.

The defendant, Clinton E. Jencks, was arraigned and entered a plea of not guilty to both counts of the indictment.

All witnesses present in the Court room were called, were sworn by the Clerk, and placed under the rule at the request of the defendant.

Mr. Williams:
Call Mrs. Perryman.

Mr. McTernan:
Excuse me, Your Honor. We request that before any testimony is taken the Government be required to make an opening statement.

The Court:
All right.

Mr. Williams:
Gentlemen of the Jury, as you have been informed here a time or two, this indictment is in two counts. The first count charges that about April 28, 1950, the defendant here, Clinton E. Jencks, signed an affidavit with the National Labor Relations Board here in El Paso, that he was not a member of the Communist Party. The Government expects to prove that at that time he was a member of the Communist Party, therefore making that affidavit false.

The second count is that he filed this same affidavit, which also stated that he was not affiliated with the Communist Party. We expect to show that he was affiliated with the Communist Party. We expect to show in connection with membership, association in the Communist Party beginning about the year 1946 and continuing up to and through April 28, 1950, the date of the filing of this affidavit.

Under the National Labor Relations Act, or what to the public is known as the Taft-Hartley Act, in order for a union to get the facilities of the National Labor Relations

Board, certain of its officers must each year file an affidavit that they are not members of the Communist Party. We expect to show that the International Union of Mine, Mill and Smelter Workers and its local up at Bayard and Silver City, New Mexico, Local 890, of which Mr. Jencks was president at that time, during the years '47 and '48, did not choose to comply with the National Labor Relations Act and, therefore, did not file the affidavit which they had a right to do. If they filed the affidavit then they got the certain facilities of the National Labor Relations Board, one of which is collective bargaining, and those kind of things. If they chose to stay out of there and have nothing to do with the facilities of the National Labor Relations Board, they did not have to file such affidavit. As I said, we expect to show that that union made the choice, in 1947, when the Act went into effect, not to file an affidavit. In 1948 they chose not to file the affidavit and not use the facilities of the Board; but we expect to show that in '49 they decided they better get in on the deal and they chose to file the affidavit, and Mr. Jencks filed an affidavit of such a nature in 1949, and then again in 1950 he filed the affidavit that is mentioned in this indictment. We further expect to show that by so filing those affidavits that they did qualify with the National Labor Relations Board under the so-called "Taft-Hartley Act" and did use the facilities of that Board. I believe that covers our case.

Mr. McTernan:

We object to the statement and complain that still the defense does not know on what overt acts, if any, the Government intends to rely in order to establish either the charge of membership or the charge of affiliation, and we ask that the Government be required at this time to state upon what overt acts it relies in order to establish either or both of those things.

The Court:

The Court thinks counsel has made a substantial statement as to what they expect to prove. That request is denied and overruled.

MRS. ELSIE PERRYMAN, a witness for the Government, having been duly sworn, in answer to questions propounded, testified as follows:

On Direct Examination:

Questions by Mr. Williams:

Q. What is your name, please?

A. Elsie Perryman.

The Court:

A little bit louder, please, Mrs. Perryman, the gentleman in the far corner over there has to hear everything you say.

Q. And your business, Mrs. Perryman?

A. I am with the National Labor Relations Board, classified as office manager.

Q. Where?

A. In El Paso.

Q. How long have you been the office manager of this NLRB Local Board?

A. Five and a half years.

Mr. Williams:

May it be understood that "NLRB" refers to the National Labor Relations Board? I presume we all catch that.

Mr. McTernan:

I will stipulate to that.

Mr. Williams:

And for the International Union of Mine, Mill and Smelter Workers, we will refer to it as "Mine-Mill."

Mr. McTernan:

That is satisfactory.

The Court:

Let it be understood, then, that those abbreviations, "NLRB", refer to the National Labor Relations Board, and that "Mine-Mill" refers to the International Union of Mine, Mill and Smelter Workers.

Mr. Williams:

And "890" will refer to the local division of that union.

The Court:

The local union at Fort Bayard and Silver City, New Mexico.

Mr. McTernan:

We will stipulate to that.

The Court:

It is so stipulated.

Q. Mrs. Perryman, as office manager, do you handle the correspondence and the filing of the non-Communist affidavits of the different unions in this section?

A. Not exclusively at the present time.

Q. Well, you are the manager of the office?

A. Yes, sir.

Q. You and your assistants handle it, do you not?

A. Yes, sir.

Q. Back in 1950 were you the office manager?

A. Yes, sir.

Q. Do you know Clinton E. Jencks personally?

A. Yes, sir.

Q. Have you had considerable correspondence with him back and forth?

Mr. McTernan:

Your Honor we object—

The Court:

Don't lead her. Is that the objection, that it is leading?

Mr. McTernan:

Yes, Your Honor.

The Court:

Don't lead the witness.

Q. Do you understand what it takes to comply with the Taft-Hartley provisions with regard to the filing of non-Communist affidavits?

Mr. McTernan:

Objection.

The Court:

Objection overruled. If she knows personally, in view of her long experience, the Court will permit her to answer.

A. Yes, sir.

Q. You refer to it as "complying", do you not, by the union?

A. Yes, sir.

Q. To comply with those provisions what are the different steps?

A. Well, the sections of the Act are 9(f), (g), and (h), which require that labor organizations file certain documents that are known to us as NLRB Forms 1080, 1081, and 1085, and also register with the Department of Labor and submit their financial reports annually to the Department of Labor, and when they have complied with all those steps then we consider them as having met the filing requirements of those sections of the Act.

Q. Then, what does that complying mean, what facilities, what advantage does the union gain?

Mr. McTernan:

We object, Your Honor, on the grounds that that calls for an opinion and conclusion by the witness on a legal matter.

The Court:

Probably the best evidence is the Act itself as to what advantages, if any, the union gets by having its officers sign the affidavit.

Mr. Williams:

Your Honor, you want me to read the Act to the jury?

The Court:

No, don't read the Act.

Mr. Williams:

Well, the witness said that she knows.

The Court:

Well, as office manager, if she knows, the Court will overrule the objection and permit her to answer.

A. Well, they can come to the Board and petition us to hold elections for representation, and employers and com-

parties can request information concerning representation that is the reason it affects commerce; and we also file charges alleging that certain employers have violated the Act, and that if they fully comply with Sections (f), (g), and (h), we can proceed to make investigations and handle their cases.

Q. You help them settle disputes?

Mr. McTernan:

Objection, Your Honor.

The Court:

Yes, don't lead her.

(At this point a document was marked as Government's Exhibit 1 and then handed by Mr. Williams to opposing counsel).

Q. Mrs. Perryman, I hand you an instrument marked as Government's Exhibit 1 and ask you what that is?

Mr. McTernan:

Pardon me. I object to that on the grounds that the document speaks for itself.

The Court

That objection is overruled.

The Witness:

May I answer?

The Court:

Yes, if you know.

A. This is an NLRB Form-1081, "Affidavit of Non-Communist Union Officer", individually filed by officers of union organizations.

Q. Whose name is signed to it?

Mr. McTernan:

I object to this, Your Honor.

The Court:

Yes, the document speaks for itself.

(At this point another document was marked as Government's Exhibit 2 and was shown by Mr. Williams to opposing counsel).

Q. Mrs. Perryman, I hand you Exhibit 2 and ask you to state what that letter is?

Mr. McTernan:

Now, Your Honor, I submit that the letter speaks for itself. This witness is not in a position to say what it is.

The Court:

Yes, the Court thinks the letter speaks for itself. If she can identify them as part of the official records of her office, the Court will permit that.

Mr. Williams:

Well, I am going to get to that.

The Court:

You expect to connect it as part of her official files of her office?

Mr. Williams:

Yes.

The Court:

If you expect to do that, the objection is overruled.

A. It says "Dear Sir"—

Q. What is the letter?

Mr. McTernan:

Your Honor, we renew our objection as to what the letter is.

The Court:

She can state briefly what it is without stating any of the contents.

Mr. McTernan:

On the basis of your ruling, all she can say is that it comes from the files of the National Labor Relations Board.

The Court:

With the assurance of counsel that he will connect it up, the Court will permit her to state, if she knows, what it is, not what the letter says.

A. It is a request from Local 890—

Mr. McTernan:

If Your Honor please, this is merely reading it in another way.

The Court:

All right, objection sustained.

Q. Is this "G-1" one of the official files of your office, Mrs. Perryman?

Mr. McTernan:

Object to this on the grounds it is leading and suggestive.

The Court:

Objection overruled.

Q. Go ahead?

A. Will you repeat the question?

Q. Is that one of your official files and has it been filed in your office?

A. Yes, sir.

Q. And can you tell by it when it was filed in your office?

A. Yes, sir.

Q. When?

Mr. McTernan:

Your Honor, it seems to me that if this witness is testifying as to facts, she must testify as to what she knows. If she doesn't know, there are ways of refreshing her recollection. It is not a function of the witness to sit on the witness stand and read from document.

The Court:

Counsel is right. She will have to testify from her knowledge if she knows.

Mr. Williams:

Well, she is testifying to what she knows.

The Court:

Let her testify if it is a document of her office and part of her official records. She can state if it is or not, if she knows.

Q. Was it filed in your office officially?
A. Yes, sir.

Mr. McTernan:
I move to strike that answer, Your Honor. I submit that is a conclusion which she is not qualified to give.

The Court:
Objection overruled. She is manager of that office.

Q. Answer it, please, was it filed officially in your office?
A. Yes, sir.

Mr. McTernan:
Same objection.

The Court:
Same ruling.

Q. When was it filed?

Mr. McTernan:
I object to this because the witness was reading from that document.

The Court:
She says it is part of her official records.

Mr. Williams:
I am going to offer this whole thing (indicating), that they are official files of her office.

The Court:
Prove that they are official files and the Court will rule whether or not they will be admitted.

Mr. Williams:
I have proved that they are official files.

The Court:
It is not necessary for her to read them if they are official documents. The documents will speak for themselves.

Q. Is this letter, "G-2", (indicating), an official file in your office, Mrs. Perryman?

Mr. McTernan:
Same objection heretofore stated.

The Court:
Same ruling. That is admitted.

Objection overruled.

(At this point four documents were marked for identification as Government's Exhibit 3, and 4, and 5).

Mr. Williams:
(Addressing Mr. McTernan). Under our previous agreement, may we have the original of the letter of March 31st from William Connolly to Clinton E. Jencks?

Mr. McTernan
What year?

Mr. Williams:
March 31, 1950.

(Same was handed to Mr. Williams).

(At this point several documents were marked for identification as Government's Exhibits 6, 6A, 7, 8, 9, and 10).

Mr. Williams:

(To Mr. McTernan). May we have the original of letter of April 21, 1950, addressed to Clinton E. Jencks?

(Mr. McTernan complied).

(At this point five documents were marked for identification as Government's Exhibits 11, 11A, 12, 12A, and 13).

Q. Mrs. Perryman, is Exhibit "G-3" an official document from your office relating to this Jencks matter?

A. Yes, sir.

Mr. McTernan:

I object to this, Your Honor. Now, you see, we are getting two conclusions in one question, whether it is part of the official records and whether it relates to the Jencks matter.

The Court:

I think the latter part of the objection is good. The objection is sustained on the latter part of it.

Mr. Williams:

Can't a witness testify to anything that she is familiar about and give her opinion of it?

The Court:

She can identify the document if it is an official file, as to whether it is a letter from John Jones to Clinton E. Jencks. She can identify it but the document speaks for itself.

Mr. Williams:

Well, without explanation they are almost meaningless.

Mr. McTernan:

The trouble is the meaning that is given to it outside of the real meaning of it.

The Court:

She cannot say the contents if it is going to be introduced in evidence. She can identify it as an official file of her office.

Q. Is "G-4" an official file—

Mr. McTernan:

I want to be sure the record is clear. Is the last answer of the witness to be stricken?

The Court:

Yes, regarding to whether it referred to Clinton E. Jencks because if it is going to be offered it speaks for itself.

Q. Is "G-4" an ofifcial part of your records? (Indicating.)

Mr. McTernan:

Your Honor, we have not seen Exhibit 4.

Mr. Williams

Your Honor, these are all exhibits that Mr. McTernan and I agreed we would present to this witness and I showed them to him previously.

Mr. McTernan:

Well, perhaps, he did show me some documents but I do not know which one has been marked as Exhibit 4.

The Court:

All right, let us move along here If it is something you stipulated about, there is no use wasting any time about it.

Mr. McTernan:

It is true that he did show me some documents but he was just now by himself over there with the reporter marking these documents and I don't know which documents were marked with what numbers.

(Whereupon Mr. Williams handed all of the documents in his hand to Mr. McTernan for his examination).

The Court:

All right, let's proceed.

Q. Mrs. Perryman, is Government's Exhibit 1 one of the documents that was required by your office in order for Mine & Mill to comply with the provisions of the Taft-Hartley Act?

Mr. McTernan:

Objection, Your Honor, on the ground it calls for an opinion and conclusion.

The Court:

Well, she is the administrative head of that office. Objection overruled.

Mr. McTernan:
But she is not, I am awfully sorry.

The Court:
Well, at least she is the manager of that office.

Mr. McTernan:
May we examine her on Voir Dire with reference to this? I think we can show that she is an office manager in the clerical sense and not in the technical part of it.

The Court:
Yes, you can ask her any questions you wish.

On Voir Dire Examination:

Questions by Mr. McTernan:
Q. Mrs. Perryman, you say you were connected with the Board for something like five and a half years?
A. Yes, sir.
Q. And have you at all times held this position that you described as office manager?
A. Yes, sir.
Q. And have you had any legal training?
A. No, sir.
Q. Would you describe the functions of your office, your positions?
A. I am supervisor of the clerical and administrative work that comes in the office.
Q. Would you tell us the kind of category of the workers that work under your supervision?
A. Stenographers and clerks.
Q. Stenographers and cerks?
A. Yes.
Q. The office is headed by a person called an Officer in Charge, is it not?

A. Yes.

Q. And in 1950 that was a man named "McEacharn", M-c-E-a-c-h-a-r-n?

A. No, that is "e-r-n".

Q. McEachern?

A. Yes, sir.

Q. And under him there are people known as field examiners?

A. Yes, sir.

Q. And also attorneys?

A. No.

Q. No attorneys in the sub-regional office?

A. No, sir.

Q. Now, so far as matters dealing with policy or the interpretation or application of policy, those were handled by Mr. McEachern, were they not?

A. That is right.

Q. And by his successor, Mr. Hudson?

A. That is right.

Q. And they were not matters that came within your province, isn't that right?

A. That is right.

Q. You made no determination as to administrative policy, isn't that right?

A. No.

Q. My statement is correct, isn't it?

A. That is correct, yes.

Q. Now, often times a problem would arise in the course of your work which would invoice the interpretation and application of administrative policy, didn't it?

A. Yes, sir.

Q. And you would take those problems to Mr. McEachern?

A. Yes, sir.

Q. Or to his successor, Mr. Hudson?

A. Yes.

Q. And if egal problems arose, they were taken up with the attorneys in the main regional office back in Fort Worth, isn't that right?

A. Yes, sir.

Q. Isn't it true that with reference to what constituted compliance with the provisions of Section 9(f) and (g) of the amended Act, those were matters on which official instructions were issued from Washington?

A. That is right.

Q. And the application of those instructions in any case was handled by Mr. McEachern, isn't that right?

A. No, sir.

Q. What did you say?

A. That is an administrative function that is handled entirely by the clerical force.

Q. Entirely by the clerical force?

A. That is right.

Q. You mean there were no problems taken up with Mr. McEachern?

A. No, sir.

Q. What did you mean a few minutes ago when you said that you take up questions that were of administrative policy with Mr. McEachern?

A. Well, administrative policy insofar as filing, the functions of our work which pertains to cases, such as petitions and charges and interpretation of the Act and the law itself is what I was referring to.

Q. You mean that there are no such policy questions that arose in connection with compliance with the filing provisions of the amended Act?

A. No.

Q. And you had complete control of these?

A. Yes.

Q. And you never took any of these up with Mr. McEachern?

A. No.

Q. Or with his successor, Mr. Hudson?

A. No.

Q. And you never got instructions from Washington on any of these questions?

A. Yes, we were under instructions from Washington on everything.

Q. So when instructions from Washington came up the matter was referred to Washington, was it not?

A. Yes, sir.

Q. Directly?

A. Yes, sir.

Q. Was the final determination as to compliance in any particular case made by Washington?

A. No.

Q. Isn't it a fact that after you got the papers involving any particular union in 1950 they were sent to Washington?

A. No, not immediately. They were processed in our office and after the process was completed and we determined and put the union in question in compliance, then the documents were forwarded.

Q. And they were reviewed in Washington, were they not?

A. No, not reviewed. They were filed.

Q. You just sent them to Washington to be filed?

A. Yes, sir.

Q. You are sure of that?

A. Yes, sir.

Q. To refresh your recollection, Mrs. Perryman, hasn't the manner of handling compliance problems in Sections 9(f), (g) and (h) been changed from 1950 to the present time?

A. In minor detail.

Q. Well, just tell me "yes" or "no". Was it changed?

A. Yes.

Q. Now, as a matter of fact, that change involved the question of the extent of review by the Washington office, didn't it?

A. No, sir.

Q. Isn't it a fact that in 1950, as soon as you got the documents in and was satisfied that they were complete as to form, you sent them to Washington?

A. Yes, sir.

Q. And under present arrangements, if you are satisfied that they are complete as to form, you hold them here, isn't that right, and send them to Washington only at stated periods of the year?

A. That is right.

Q. And the purpose of sending them to Washington immediately back in 1950, that is, immediately after you were satisfied they were complete as to form, was to obtain Washington review, isn't that right?

A. No, sir.

Mr. McTernan:

We have no further questions.

On Direct Examination (Resumed):

Questions by Mr. Williams:

Q. Is there a compliance officer in this district?

A. No, sir, not as such.

Q. Well, who handles that work?

A. A clerk-stenographer.

Q. Well, is it you or not?

A. No, sir, I don't handle it at the present.

Q. In 1950 who was the compliance officer in your office?

A. It was a young lady that is no longer with us. Her name is Mary Guthrie.

Q. On the date of that instrument was anyone in the office other than you?

A. No, sir.

Q. And who was handling it on that date?

A. I was.

Q. Then, is that an official document that was required on that date by your office as to compliance by that union?

Mr. McTernan:

Objection.

The Court:

Objection overruled.

A. Yes.

Q. Do you know the date that instrument was received and filed in your office?

A. Yes, sir.

Q. What was it?

A. May 1, 1950.

Q. How did you receive that document?

A. Through the mail.

Q. And did you receive other similar documents along with it, of other officers I mean?

A. Yes, sir.

Mr. McTernan:

Your Honor, will you caution counsel again not to lead this witness?

Mr. Williams:

Well, I will try my best to comply with counsel's request but the things I am asking are not leading. There is no argument about it. I am not getting anything out of her that is no proper.

The Court:

I am sure that counsel is not trying to deliberately lead the witness. Don't lead her, though, where it can be avoided.

Q. Does this Government Exhibit 2, is that a letter that is on file in your office?

A. Yes, sir.

Q. Did it come, or how did you get it?

A. Through the mail.

Q. With respect to "G-1", did they come at the same time or different times?

A. At the same time.

(Mr. Williams hands another document to witness).

Q. Government's Exhibit 3, is that one of the documents that was required by your office in order to put that union in compliance with the Taft-Hartley Act?

Mr. McTernan:

Same objection.

The Court:

Same ruling, overruled.

A. Yes, sir.

Q. "G-4", is that true as to that instrument also?

Mr. McTernan:

Same objection.

The Court:

Same ruling, overruled.

A. Yes, sir.

Q. "G-5", is that true also of that document?

Mr. McTernan:

Same objection.

The Court:

Same ruing, objection overruled.

A. Yes, sir.

Q. And how about "G-6" and "G-6A"?

Mr. McTernan:

Same objection, Your Honor, and I would suggest to the Court that it might be fair to the witness for the Court to look at that document. I think the question may seriously involve the witness. I think it is a very misleading question given on the face of that document.

The Court:

Well, the objection is overruled at this time.

A. Well, these two are, yes sir, that is right.

Q. Now, what is "G-7" (Again handing document to witness)?

A. It is an affidavit of Non-Communist Union Officer, NLRB Form 1081.

Q. Is it or not another non-Communist affidavit signed in compliance by that union with this Act?

Mr. McTernan:

I object to the second half of that question.

The Court:

Yes, objection sustained to the last half of it.

Q. Is "G-8" a similar document?

Mr. McTernan:
I submit that that question is completey meaningless.

The Court:
Yes, that calls for a conclusion whether or not it is a similar document to something else.

Q. What is "G-8"?
A. NLRB Form 1080, a "Certificate of Union Officers."
Q. Is that one of the documents required by your office in order to put that union in compliance?

Mr. McTernan:
Same objection.

The Court:
Overruled.

A. Yes, sir.
Q. Now, "G-9", what is that, please?
A. NLRB Form 1085, "Distribution of Financial Date Ceritficate."
Q. Is that one of the documents required by your office in this matter?

Mr. McTernan:
Same objection.

The Court:
Overruled.

A. Yes, sir.
Q. "G-10", what is that?
A. NLRB Form 3054, "Certificate of Intent."
Q. Is that one of the official documents in this regard?

Mr. McTernan:
Same objection.

The Court:
Overruled.

A. Yes, sir.
Q. Now, "G-11" and "G-11A", what are they, please?
A. They are tissue copies of our form pattern letters, Number 32, in which we notify a union that we have received their documents filed in connection with Sections 9 (f), (g), and (h) of the Act.
Q. Now, "G-11" and "11A", do they have any connection, and if so, explain to the jury why there is two of those documents?
A. Yes, one is dated—well, I believe these are the same.
Q. That is what I want you to explain?
A. "G-11" is the tissue copy.
Q. Well, it is almost blank, isn't it?
A. Yes, sir.
Q. Does it go with and is it a part of "G-11A"?
A. Yes, it is a copy of "G-11A".
Q. Does "G-11A" fill in the blanks that are left in "G-11"?
A. Yes, sir.
Q. Now, are these offiical documents in this regard?

Mr. McTernan:
Same objection.

The Court:
Objection overruled.

A. Yes, sir.
Q. Now, "G-12" and "12A", what are they?
A. "12" is a letter from Local 890 and "12A"—

Mr. McTernan:

I move to strike that on the grounds it is an opinion and conclusion of the witness.

The Court:

Well, at this time the Court thinks so, as to who signed the letter. Objection sustained at this time.

Q. In your correspondence wih 890 and Mr. Clinton Jencks, did you receive each of those letters through the mail, or mailed them to them?

Mr. McTernan:

I object to that as calling for a conclusion and opinion of the witness, and leading and suggestive, Your Honor.

The Court:

Objection sustained at this time unless there is some document there signed by this defendant.

Q. Well, in your correspondence with Mine-Mill, did you receive those letters that purport to be from them through the mail?

Mr. McTernan:

Same objection.

A. Yes, sir.

Mr. McTernan:

Well, now, Your Honor—

The Court:

Just a minute, same ruling unless these documents are signed by the defendant, Clinton Jencks.

Mr. McTernan:
Will Your Honor strike out the last answer and caution the jury to disregard it?

The Court:
Yes, the jury will disregard the last answer.

Q. Did your office place Mine-Mill in compliance during the year 1950 with the Taft-Hartley Act?

Mr. McTernan:
Objection.

The Court:
Objection overruled to that.

A. Yes, sir.
Q. And as a result of what instruments did you place it in compliance?

Mr. McTernan:
Objection.

The Court:
Objection overruled.

A. As a resut of these instruments, namely, 1080 and 1081, of each and every officer of that local; 1085, and certificate from the Department of Labor that they complied with their filing requirements.
Q. Now, in regard to those instruments, how is it handled in your office about the date that they are filed and received, how do you do that?
A. They are date-stamped at the hour and date of receipt.

Q. Do those stamps shown on those instruments correctly reveal the time and exact date they were received in your office?

Mr. McTernan:
I object to this on the grounds that no foundation is laid.

The Court:
Objection overruled.

A. Yes, sir.
Q. As a result of that compliance did Mine-Mill take advantage of the Taft-Hartley Act during the year 1950?

Mr. McTernan:
I object to this as calling for an opinion and conclusion of the witness.

The Court:
Objection overruled.

A. They used the services of the Board, yes, sir.
Q. Now, what is "G-13" (hands documents to witness)?
A. It is NLRB Form 501 "Charge Against Employer", filed with our office.
Q. What does that mean to us laymen, Mrs. Perryman?
A. It is a charge filed by Local 890 against employer, Empire Zinc Company, alleging violations of Section 8(a), sub-sections (1) and 5 of the National Labor Relations Act.
Q. Is that in compliance with the Taft-Hartley Act?

Mr. McTernan:
Objection.

The Court:
Objection overruled.

Mr. McTernan:
Your Honor, this is a matter that deals with a different section of the Act and not Sections 9(f), (g), and (h) that this witness has testified about.

The Court:
Objection overruled, if she knows.

A. Yes, sir.
Q. Could the union have filed and used the facilities as shown by that instrument if it had not been in compliance with the Taft-Hartley provisions?

Mr. McTernan:
Objection.

The Court:
Well, the Court will permit her to answer if she knows.

Q. Could the union have filed that instrument and used those facilities as you related, if they had not been in compliance with other provisions you have discussed?
A. They could have filed but we could not have processed or proceeded with the investigation.
Q. Did you process that complaint or trouble?

Mr. McTernan:
We object on the ground that this is wholly beyond the witness' competency.

The Court:
Well, if she knows.

Mr. McTernan:

Your Honor, I submit that the question of whether she knows is not for her to decide. The foundation has to be laid.

The Court:

If she knows from her official records of her office, the Court will permit her to answer.

A. Yes, sir, it was processed.

Q. Could they have used those facilities if they had not been in compliance.

Mr. McTernan:

Same objection.

The Court:

Overruled.

A. No, sir.

Q. Could they have used your facilities, of your office, in that regard, if they had not filed especially that Exhibit "G-1"?

Mr. McTernan:

Same objection.

The Court:

Overruled.

Mr. McTernan:

Your Honor, I submit that asking a witness to give some relative importance to these documents is calling for an opinion and conclusion to the third and fourth degree. I submit that there is no basis for it in law or otherwise.

The Court:

Well, she is the manager of that office and familiar with the records, and if she knows the Court will permit her to answer. The objection is overruled.

A. No, sir.

Q. There may be a little confusion on "6" and "6A". I think "6A" is the instrument I got from these gentlemen, is it not?

A. Yes.

Q. And what is it?

A. "6" or "6A"?

Q. "6A"?

A. It is a letter from the U. S. Department of Labor wherein 890 is advised that—

Mr. McTernan:

Just a minute. I object.

The Court:

Yes, objection sustained.

Q. Did you receive a copy of that instrument in your office?

A. Yes, sir.

Q. And is that shown there?

A. Yes, sir.

Q. What is it?

A. It is "G-6".

Q. In other words, what is the connection between "G-6" and "G-6A"?

A. They are the same one. "G-6" is the tissue copy showing the dates of "G-6A".

Q. Are they required by the Act to put the union in compliance?

A. Yes, sir.

Q. Does Local 890, or not, fall within the jurisdiction of your office?

Mr. McTernan:
Excuse me. May I have that question again?

(The reporter repeated the question).

A. Yes, it does.
Q. When your ofice, Mrs. Perryman, receives one of these non-Communist affidavits, do you make any investigation to see whether or not it is bona fide and official?

Mr. McTernan:
Objection.

The Court:
Overruled.

A. No, sir.
Q. What did you do with it?
A. We accept it as received so long it meets our requirements as to completeness.
Q. You accept it as bona fide, in other words, and file it?
A. Yes, sir.
Q. Mrs. Perryman, through your correspondence with Clinton E. Jencks, are you familiar with his signature when you see it?
A. Yes, sir.
Q. Do those instruments there that purport to bear his signature, in your opinion are they his signature?
A. Yes, sir.

Mr. Williams:

We offer all of these instruments in evidence, Your Honor.

Mr. McTernan:

Before they are received, would you withhold your ruling pending further examination of the witness?

The Court:

Yes, the Court will withhold its ruling.

Mr. McTernan:

It is a question of examining the witness as to this foundation.

The Court:

The Court will withhold his ruling until a little later.

(At this point a fifteen-minute recess was taken, until 10:50 A. M., at which time proceedings were resumed as follows):

Mr. Williams:

Just before we recessed I offered these instruments in evidence, Your Honor.

Mr. McTernan:

I thought Your Honor had agreed to withhold ruling on them.

The Court:

Yes, at the request of the defendant's counsel, I will defer their introduction until he cross-examines the witness. Are you through with your direct examination?

Mr. Williams:
Yes, sir.

The Court:
Mrs. Perryman, will you resume the stand, please?

(Whereupon Mrs. Perryman resumed the witness stand).

On Cross-Examination:

Questions by Mr. McTernan:

Q. Mrs. Perryman, I am a little unclear as to what your position in the sub-regional office was in April and May of 1950. Will you tell us again?

A. Office Manager.

Q. You were the Office Manager; and how many clerical employees were there in the office at that time?

A. One. Well, two with myself.

Q. And what was the capacity of the other person?

A. Clerk-Stenographer.

Q. And was there anyone on the administrative staff besides Mr. McEachern, the Officer in Charge?

A. There were two field examiners.

Q. Now, what was your relationship, your physical relationship, that is, to incoming materials in the office?

A. Opening the envelopes and receiving them in the office and distributing them.

Q. Distributing them to the parties to whom they were to go?

A. Yes.

Q. Now, do you know about how many unions were using the jurisdiction of the board in this area at that time?

A. No.

Q. Do you know how many compliance files you had open at that time?

A. No.

Q. Have you any idea?

A. No.

Q. You can't even make an estimate?

A. It would be hard to.

Q. Was it more than ten?

A. Oh, yes.

Q. More than a hundred?

A. I couldn't say.

Q. Would you say approximately a hundred?

A. I still—no, I don't know.

Q. Possibly could it have been a hundred and fifty?

A. No.

Q. Now, am I correct in understanding that as you applied the compliance procedures a union had to have a non-Communist affidavit, that is, your Form 1081, on file for every person holding an office as that position was described in the union's constitution?

A. Yes, sir.

Q. So that in the case of many unions you might have ten or fifteen affidavits filed at any one time, is that right?

A. Yes.

Q. And in the event the union changed any of its officers they had to file an affidavit for the new incoming officer, right?

A. Yes.

Q. And it would apply if there was any shift or change ever the union had its election of officers, is that right?

A. Yes, sir.

Q. And it would apply if there was any shift or change in between the election of officers, is that right?

A. Yes.

Q. So that in the course of a year you would handle perhaps several hundred of these Forms 1081, the Affidavit of Non-Communist Officer, is that right?

A. Approximately.

Q. Now, I notice that certain of the documents which you have identified here are dated in the year 1949. This applies particularly to Government Exhibits-for-identification 7, 8, 9, and 10. As you recall it, did you receive some documents, Forms 1081 and other forms, from the union, Local 890, in the year 1949?

A. Yes, sir.

Q. As you remember it, was that the time when the union first attempted to come into compliance with the requirements of Sections 9(f), (g), and (h) of the Amended Act?

A. Yes, sir.

Q. And you were advised, as a matter of fact at that time the union filed a copy of its constitution, didn't it?

A. Yes, sir.

Q. In any event you have a copy in your file?

A. Yes, sir.

Q. And you saw from that constitution that the union had an election of officers in the spring of the year, did you not?

A. We didn't check their election dates. I don't know.

Q. Isn't that one of the things you were required to do?

A. No, sir.

Q. Isn't it one of the things that somebody connected with this compliance matter was required to do?

A. No, sir.

Q. How did you know when the affidavits were no longer operative?

A. They certified to us on the Form 1080 the expiration of their officers' terms. We used those dates.

Q. So that you expected a filing on behalf of Local 890 in April and May of 1950, didn't you?

A. Yes, sir.

Q. And I direct your attention to Government's Exhibit 8-for-identification, Form 1080, which bears the date "October 15, 1949." For your purposes (handing document to witness) you assumed that the date "April 30, 1950" was the date upon which all of the non-Communist affidavits filed in 1949 would no longer be operative, isn't that right?

A. Yes, sir.

Q. And so far as your purposes were concerned it was necessary for the union—I withdraw that. For your purposes, anything filed in the way of a 1080 or 1081 prior to April 30, 1950 was no longer of any effect, it could be disregarded, is that right?

A. I don't understand what you mean, "prior to April 30, 1950." Is that what you said?

Q. Yes. Well, there is nothing complicated about the question as I intended it, Mrs. Perryman. What I had in mind was that absent any further filing the union would not be in compliance, as you understand it, after April 30, 1950, is that right?

A. After April 30th, that is right.

Q. So after April 30, 1950 these 1940 documents were so much history, isn't that right?

A. Yes, sir.

Q. And had nothing to do with the compliance with the union within or after the period following April 30, 1950, isn't that right?

A. That is right.

Q. And if I understand your testimony correctly, those documents, to wit: Government Exhibits-for-identification 5, 6, 6A, 7, and 8, had no further reference to compliance, as you call the term, of Local 890 for any

period after April 30, 1950? (Showing document to witness)

A. No, that isn't altogether right. Some of them did and some of them didn't.

Q. May I see the documents again, Mrs. Perryman?

(Witness hands documents back to counsel)

Q. I think I got the wrong numbers. I will reframe my question. Am I correct, on the basis of your testimony so far, that Government Exhibits-for-identification 7, 8, 9, and 10, had nothing to do with compliance by the union for any period after April 30, 1950? (Showing documents to witness)

A. It still isn't altogether right. Some did and some didn't.

Q. Do you have in mind that Certificate of Intent?

A. No, sir.

Q. Which ones do you have in mind?

A. The Affidavit of Non-Communist Officer, Form NLRB-1081.

Q. Government Exhibit which?

A. Government Exhibit "G-7".

Q. Well, that was dated October 15, 1949, was it not?

A. Yes, sir. And it was valid for a year after date of execution.

Q. Unless the union changes its officers?

A. Yes, sir.

Q. And Form 1080, that is the one we talked about a minute ago, which was Government's Exhibit 8, I guess you have it right there—

A. Yes.

Q. —shows that those officers who signed in October, 1949 were to go out of office on April 30, 1950, isn't that right?

A. Yes.

Q. So am I correct now in stating that those documents which you hold in your hand, to wit: Government's Exhibits-for-identification 7, 8, 9 and 10, did not establish compliance by the union for any period after April 30, 1950?

A. Provided there was a change in the officers.

Q. Well, in administering the Washington instructions in this area did you regard every non-Communist affidavit on Form 1081 as valid for a year?

A. Yes, sir.

Q. So that in working out your determination if the union was in compliance in May, 1950 you did not rely on non-Communist affidavit, Form 1081, which is marked here for identification as Government's Exhibit 1, isn't that right?

A. Would you repeat that question?

Mr. McTernan:

May the question be read, please?

(The reporter repeated the question).

A. That is right.

Q. Now, Mrs. Perryman, in 1950 when you were administering the Washington instructions on the filing and other requirements under Section 9(f), (g), and (h), under the National Labor Relations Act, as amended, you were familiar, were you not, with the fact that for a local union to invoke the procedures of the board the local union itself had to file certain documents that met your requirements, but also the national union with which it was affiliated had to file such documents, were you not?

A. Yes, sir.

Q. And you were familiar with that?

A. Would you repeat that first part, please, the first part of the question?

Mr. McTernan:

May it be read?

(The reporter read the question back).

A. Yes, sir, that is right.

Q. And your instructions were, were they not, not to accept any filings from the local union until the national or international union was in compliance?

A. That is right.

Q. You had nothing to do with determinations for compliance by the national or international union, as it was?

A. No, sir.

Q. That was done by Washington?

A. Yes, sir.

Q. And the documents that had to be filed by the national and international unions were filed in Washington, were they not?

A. Yes, sir.

Q. And you have in your file here in the sub-regional office no filing by the International Union of Mine, Mill and Smelter Workers of America for the year 1950?

A. No, sir.

Q. Mrs. Perryman, these documents, these forms, 1080's, 1081's and 1085, which you have identified here, without going into any detail as to specific numbers, now, there were received at your office already filled out, weren't they?

A. Yes, sir.

Q. And you didn't see anybody fill in any of the blanks, did you?

A. No, sir.

Q. Or affix his signature to any of them?

A. No, sir.

Q. You never saw Mr. Jencks sign any document, did you?

A. No, sir.

Mr. McTernan:

No further questions, Your Honor. We are ready to state our objections to the documents.

The Court:

All right.

Mr. McTernan:

Do you want me to do that now? (Addressing Mr. Williams)

Mr. Williams:

I didn't understand your remark.

Mr. McTernan:

I said I was through with my cross-examination. I am ready to state my objections to he documents but I thought you might want to ask her some more questions.

Mr. Williams:

Yes, I want to ask a few more questions.

On Re-Direct Examination:

Questions by Mr. Williams:

Q. Mrs. Perryman, when this Exhibit "G-155" (showing document to witness) was received in your office and marked filed as of May 1, 1950, did it take effect in your office to extend the time of compliance—

Mr. McTernan:

I object to this, Your Honor, on the grounds—

Q. —over and above what the other affidavit of 1949 covered?

Mr. McTernan:

Now, I didn't mean to interrupt counsel. I thought he was finished. I object to the question on the grounds that it calls for her opinion and conclusion without foundation. It calls for an opinion as to a question of law and it is leading and suggestive.

The Court:

Objection overruled.

A. Yes, sir, it did.

Q. From when to when did it extend the time of compliance—or, rather, I will reframe that—to when did it extend the time?

Mr. McTernan:

Same objection.

The Court:

Objection overruled.

A. To April 30, 1951.

Q. And is that further than the other affidavit of '49 extended it?

Mr. McTernan:

I object to that, Your Honor.

The Court:

Overruled.

A. Yes, sir.

Q. At the time you processed this "G-13" (showing document to witness) and allowed the union to take advantage of the provisions of the Act, was the International Union in compliance, or do you know?

Mr. McTernan:

Objection.

The Court:

Well, if she knows.

Q. Do you know whether it was or not?

A. Yes, sir.

Q. Was it?

A. Yes, sir.

Mr. McTernan:

We move to strike that. This witness can't be judge of her qualifications. I submit the foundation ought to be laid as to how she knows.

Mr. Williams:

Let him ask her how she knows.

The Court:

Yes, you can cross-examine her on that. Objection overruled.

Mr. Williams:

You can have the witness.

On Re-Cross-Examination.

Questions by Mr. McTernan:

Q. Now, Mrs. Perryman, you don't mean, do you, that Government's Exhibit 1, all by itself extended the compliance of Local 890 from some date after April 30, 1950, do you?

A. Yes, I did.

Q. All by itself?

A. No, not by itself.

Q. As a matter of fact, the affidavit of any one officer couldn't possibly extend the compliance of a union for one hour, could it?

A. No, sir.

Q. And as a matter of fact the affidavits of all the officers of the union couldn't extend the compliance of the union one hour, could it?

A. No, sir.

Mr. McTernan:

No further questions, Your Honor.

The Court:

You would like to make your objection now, Mr. McTernan, to the introduction of these documents? As I understand it, the Government offers these documents in evidence. Mr. Williams, you now offer the documents that have been identified in evidence?

Mr. Williams:
Yes, sir.

The Court:
To which the defendant objects?

Mr. McTernan:
Yes, Your Honor. First, Your Honor, we object to Government's Exhibits-for-identification 7, 8, 9 and 10, they being the 1949 filings, which had nothing to do with the union's compliance in the period here mentioned, prior to the period that is within the statute of limitations, and if it is claimed by the Government that this is evidence of some false filing in 1949, then the matter is not only inadmissible under such cases as "Holt vs. The United States, 256 Fed. 748", but so prejudicial as to require a declaration of a mistrial.

With reference to all documents which purport to bear a signature "Clinton E. Jencks"—and they include, Your Honor, Government's Exhibits 7, 8, 9 and 10, and Government's Exhibits 1, 2, 4, 5, 12 and 13-for-identification. We object to them on the grounds that there is no foundation whatsoever in this record for the conclusion that these bear the signature of Clinton E. Jencks; and we object to them on the grounds that the only identification is that they come out of the files of the Labor Board, but they are not connected in any way with this defendant.

We further object to each and all of the documents on the grounds that they are immaterial and irrelevant, since, under the witness' testimony they are not matters which invoke the jurisdiction of the National Labor Relations Board, but were documents only partially related

to invoking the jurisdiction of the National Labor Relations Board, since under the regulations which this witness administered many other things were involved, including the filing of the national union of Mine-Mill.

The Court:

(To Mr. Williams): Anything to say in response?

Mr. Williams:

There's four or five objections there, but I think they have certainly been identified by this lady as being official documents on file in her office upon which she acted to put them in compliance, and they did take advantage of the facilities of the board as a result of each and every one of these instruments, and did utilize them.

The Court:

Does the Government expect to prove the genuineness of these alleged signatures of the defendant?

Mr. Williams:

I can, but she has testified it is his signature, I believe, without objection.

The Court:

All objections are overruled.

Mr. McTernan:

Your Honor, she said she was familiar with it and I asked her if she had ever seen him sign his name and she said "no".

Mr. Williams:

She said,—she said what, now?

Mr. McTernan:

On cross-examination, in answer to my last question she said she had never seen him sign his name.

The Court:

But she did testify on direct that in her opinion it was.

Mr. McTernan:

There is no foundation for that.

Mr. Williams:

I will withhold the introduction of these documents.

The Court:

All right. (To witness) You may stand aside.

(Witness excused.)

W. J. UPTON, a witness for the Government, having been d ly sworn in answer to questions propounded, testified as follows:

On Direct Examination.

Questions by Mr. Williams:

Q. What is your name, please?
A. William James Upton.
Q. And your business?
A. Banking.
Q. Where?
A. Bayard, New Mexico.
Q. What bank are you with?
A. Grand County State Bank.

Q. Do you have an official document of that bank relating to Clinton E. Jencks with you?

A. Yes, sir.

Q. May I see it, please?

(Witnes hands document to counsel).

Q. Which is the front of this?

A. This is the contract on this side (indicating) and the other is the register.

(At this point the instrument was marked as Government's Exhibit 14).

Q. What is your position with the bank, please?

A. Executive Vice-President.

Q. How long have you been connected with that bank?

A. Since it was opened, seven years.

(The instrument, "G-14", was shown to Mr. McTernan by Mr. Williams).

Q. Do you know the defendant here, Clinton E. Jencks?

A. Yes, sir.

Q. What is this instrument, "G-14", that I hand you, just generally speaking? (Hands document to witness)

A. It is the contract application for rental of a safe deposit box in the Grant County State Bank.

Q. Did you see the defendant, Clinton E. Jencks, put his signature on that instrument?

A. Yes, sir.

Q. Is that it? (Indicating)

A. Yes, sir.

Mr. Williams:

We offer the instrument in evidence, Your Honor, as a valid signature of the defendant.

Mr. McTernan:

We would like an opportunity to cross-examine the witness, Your Honor.

Mr. Williams:

You may have him.

On Cross-Examination.

Questions by Mr. McTernan:

Q. Mr. Upton, have you been Executive Vice-President of the Grant County State Bank for the last seven years?

A. Well, the title has been "Acting Vice-President" or "Executive Vice-President" during that time.

Q. Is there an officer or employee of the bank who is in charge of the safe deposit operations of the bank?

A. No, sir. We have a small bank and there are several of us that attend to this, to everything.

Q. You mean the Executive Vice-President alo handles matters connected with opening a safe deposit contract and access to the safe deposit box?

Mr. Williams:

Let me clear up a thing that might save a little time.

The Court:

Well, this is his witness.

Mr. Williams:

I am not offering the entire instrument, and I am not offering what he is questioning him about.

The Court:
That's his witness.

Mr. McTernan:
If counsel wants to withdraw the document it is perfectly all right.

Mr. Williams:
All right, I will withdraw the document, and offer this instrument for the purpose of showing the signature of Clinton E. Jencks on the side headed "Appointment of Deputy" and on the side where it is marked "G-14". I offer the signature purported to be "Clinton E. Jncks" only.

Mr. McTernan:
Now if Government's counsel really knows where he's going I would like to resume my cross-examination.

Mr. Williams:
Now, Your Honor, don't you consider that statement entirely out of order and improper? I may not be as smart as Mr. McTernan but I will struggle along somehow.

Mr. McTernan:
We will struggle together, Mr. Williams.

The Court:
Well, now let's move along here. The Government is offering that instrument for the purpose of identifying the signature of the defendant.

Mr. Williams:
As shown in that one place. It is on there in four or five other places too.

Mr. McTernan:

I move to strike that, Your Honor. This prosecutor isn't testifying here and isn't under oath. I request that the jury be instructed to disregard that statement.

The Court:

The jury will disregard that part of the statement; but if you want to cross-examine him about the signature you can proceed.

Q. I will withdraw the portion of the question I had propounded and start again. Am I correct in understanding, Mr. Upton, that the Executive Vice-President of the bank handles safe deposit customers with reference to the opening of safe deposit boxes?

A. Yes, sir, and others also do so.

Q. And do you have any personal recollection of a transaction with Mr. Jencks on April 6, 1950?

A. No, sir, only that that is my writing and that that is his signature.

Q. So that but for having looked at the document before you came here you wouldn't know whether you had had any transaction with Mr. Jencks concerning the safe deposit box, is that right?

A. (Hesitates)

Q. Do you understand the question?

A. No, I don't understand it.

Mr. McTernan:

May the question be read, Your Honor?

(The reporter read the question.)

A. I would not have remembered.

Q. So you wouldn't have remembered the transaction, would you?

A. It is possible, yes, sir.

Q. Now, did you know Mr. Jencks personally on April 6, 1950?

A. Yes, sir.

Q. Had you met him before then?

A. Yes, sir.

Q. And have you seen him since then?

A. Yes, sir.

Q. You feel considerable hostility towards Mr. Jencks, don't you?

A. Not more so than other people.

Mr. McTernan:

I move to strike that and move that this witness be cautioned to answer directly.

The Court:

Yes, the witness is directed to answer the question. The jury will disregard that last answer.

Mr. McTernan:

May the question be read to him, Your Honor?

The Court:

Mr. Reporter, read that last question.

(The reporter complied.)

A. Well, I answered the question the best I can.

Q. I am asking you with reference to your feeling, Mr. Upton; I would like an answer as to your feeling?

A. You mean you want me to answer "yes" or "no"?

The Court:

Yes, as to whether you have hostility toward this defendant yourself; you, personally.

A. Well, to a certain extent, yes.

Q. You have. Are you a member of the Grant County Chamber of Commerce?

A. No, sir.

Q. Or is it called the Bayard Chamber of Commerce, is there a Bayard Chamber of Commerce?

A. Yes, sir.

Q. Are you a member of that?

A. Yes, sir.

Q. You are an officer, aren't you?

A. No, sir.

Q. You have been an officer?

A. Yes, sir.

Q. Were you an officer in 1950?

A. I can't remember.

Q. You were an officer in 1952, weren't you?

A. No, sir.

Q. Now, that organization has issued many statements hostile to Mr. Jencks, have they not?

A. No, sir.

Q. Isn't it a fact, Mr. Upton, that you participated with a group of people who assaulted Mr. Jencks in front of the union hall in 1952?

A. No, sir.

Q. You recall an incident in which Mr. Jencks was assaulted in front of the union hall in 1952, don't you?

A. I don't know whether Mr. Jencks was there or not.

Q. You were there, weren't you?

A. Yes, sir.

Q. And you know, and this was a demonstration of people hostile to the union, wasn't it?

A. Yes, sir.

Q. They were trying to take the union office away from the union, weren't they?

A. Not that I know of.

Q. Didn't you say you were there to protect the interests of the landlord?

A. Yes, sir.

Q. And had to do with the property that had been occupied by the union, isn't that right?

A. No, sir.

Q. Was it property that was being used by the people who were making the film "Salt of the Earth"?

A. They were people that were making the film on the property, yes, sir.

Q. And you know, don't you, that part of this group whom you were with assaulted Mr. Jencks?

A. I was not a part of the group, sir.

Q. Well, you approved the assault on Mr. Jencks, didn't you?

A. I did not.

Q. Hasn't your organization denounced Mr. Jencks as a radical labor leader?

A. Which organization?

Q. The Chamber of Commerce?

A. No, sir.

Q. Never?

A. No, sir.

Q. You are sure of that?

A. Yes, sir.

Mr. McTernan:

Your Honor, we hadn't been able to anticipate the testimony of this witness. We believe we have certain documentary evidence which would be useful in connection with the cross-examination of this witness which is not in the Courtroom, and we would like to defer cross-examination of him until we can obtain that material.

The Court:

Well, the Court thinks that is a fair request.

Mr. Williams:

We will never get through with the trial if you postpone the examination of every witness so they can send to New York or some other place for what they want.

Mr. McTernan:

We made a number of proposals before the trial to facilitate all this but none of them were granted.

The Court:

Well, the question here is whether or not that is the signature of the defendant, but if there is any further pertinent cross-examination we can do it later. We won't stop the trial.

Mr. McTernan:

What we would like to do is to defer cross-examination of this witness.

The Court:

Well, we can't adjourn Court for that. (To witness) Is the Court to understand that you personally saw the defendant sign the name "Clinton E. Jencks" on this document?

The Witness:

Yes, sir.

The Court:

You personally saw it?

The Witness:

Yes, sir.

On Re-Direct Examination.

Questions by Mr. Williams:

Q. Mr. Upton, in answer to their question that you to a certain extent were hostile, it seems you wanted to explain that extent. If you do, please do so?

Mr. McTernan:

To what extent? I don't recall any such testimony.

The Court:

I remember that he used the word "extent". I think he now wants to ask him what he meant by his answer.

Mr. Williams:

I feel certain his answer was: "To an extent, yes."

Q. To what extent do you consider yourself hostile?

A. Well, in our business and in our territory up there, we try to do what we think is right, and if other people do what we don't think is right we, to a certain extent, have some animosity towards them. Now, to some there is more; to some there is less—if I get out of line, why, you stop me, so—

The Court:

Well, we are not going into a lot of detail.

A. Well, the situation is this. Mr. Jencks, the union which he represents, still has an account with us, and they have a safe deposit box with us, and if we were, or if I were, as bitter as some of the people in our community we would ask them—

Mr. McTernan:

I don't think there is any cause for that.

The Court:

Gentlemen of the jury, you will disregard that last statement. We are not going into any details about that.

The Witness:

What I meant to say is that it is not as much as it might be.

Mr. Williams:

I have no desire to go further unless he wants to, Your Honor.

Well, the Court will control that. (To witness) You may be excused but be subject to recall in the afternoon.

(Witness excused.)

* * * * * * * *

DON A. WILSON, a witness for the Government, having been duly sworn, in answer to questions propounded testified as follows:

On Direct Examination:

Questions by Mr. Williams:

Q. What is your name, please?

A. Don A. Wilson.

Q. And your business?

A. I am Vice-President of the American National Bank in Silver City.

Q. How long have you been there?

A. Well—

Q. How long have you been connected with that bank?

A. Twenty-five years.

Q. As a banker is it part of your business to study signatures and to recognize and learn signatures, and especially of your customers?

A. Yes.

Q. Has Clinton E. Jencks had an account in your bank?

A. Yes.

Q. Do you know him personally?

A. Yes.

Q. Have you ever seen him sign his name?

A. Yes.

Q. Are you able to look at his signature and state as to whether or not it is his signature, are you familiar with his signature?

A. Yes.

Q. Can you look at Government's Exhibit 1 here (handing document to witness) and give the Court and the jury your opinion as to whether or not that is his signature?

A. In my opinion, it is.

Q. "G-2"? (Handing document to witness)

A. That also.

Q. "G-4"? (Handing document to witness)

A. Yes.

Q. "G-5"? (Handing document to witness)

A. Yes.

Q. G-13"? (Handing document to witness)

A. Yes.

Q. "G-7"? (Handing document to witness)

A. Yes.

Q. "G-8"? (Handing document to witness)

A. Yes.

Q. "G-9"? (Handing document to witness)

A. Yes.

Q. "G-10"? (Handing document to witness)

A. Yes.

Mr. Williams:

You may have the witness.

On Cross-Examination.

Questions by Mr. McTernan:

Q. You say you know Mr. Jencks?

A. Yes, sir.

Q. How long have you known him?

A. Six or seven years.

Q. Has he had an account at your bank?

A. Pardon?

Q. Has he had an account at your bank?

A. Yes, sir.

Q. How long?

A. About that period, six or seven years.

Q. Still have it?

A. Doesn't have one now, no.

Q. When was it closed, do you know?

A. Six or seven months ago.

Q. And what is the bank's practice with reference to keeping signature cards for bank accounts; does it keep such signature cards?

A. Yes, sir.

Q. For how long a period does it keep such signature cards after the account is closed?

A. Ordinarily, six years.

Q. So in the ordinary course of your business your bank should still have the signature cards of Mr. Jencks?

A. Yes, sir.

Q. Have you brought them with you?

A. Yes, sir.

Q. You have?

A. Yes, sir.

Q. Do you have them with you right now?

A. Yes.

Q. May I see them, please?

(Witness hands instruments to Mr. McTernan).

Q. Thank you. Now, are you familiar with the fact that there is a science of handwriting analysis?

A. Say signatures rather than handwriting.

Q. No, I am asking you a question. Are you familiar with the fact that there is a science of handwriting analysis?

A. Yes, sir.

Q. Have you studied it?

A. No.

Q. Have you taken any theoretical training in analysis of handwriting?

A. No.

Q. Your experience is simply a practical one in learning to memorize signatures so that you recognize them again?

A. Yes.

Mr. McTernan:

No further questions.

On Re-Direct Examination.

Questions by Mr. Williams:

Q. Approximately how many times would you say you had seen Mr. Jencks sign his name?

A. Well, I know five or six.

Q. Are these the official signature cards in your bank at this time (indicating)?

A. Yes, sir.

(Two instruments were marked "G-15" and "G-16")

Mr. Williams:

We offer "G-15" and "G-16".

Government's Exhibit 15, being received in evidence, reads in words and figures as follows:

"G-15"

No. .....

Date 4-11-47

The American National Bank, Silver City, New Mexico

In receiving items for deposit or collection, this Bank acts only as depositor's collecting agent * * * of business on day deposited.

Authorized Signature

(S.) CLINTON E. JENCKS,
(S.) VIRGINIA D. JENCKS.

Residence 707 Bullard,

Occupation Smelter Worker.

Joint Account-Payable To Either Or Survivor

We agree and declare that all funds now, or hereafter, deposited in this account are, and shall be, our joint property * * * legatees, assigns and personal representatives.

Witness our hands and seals this 11 day of April 1947.

(S.) CLINTON E. JENCKS, (Seal)
(S.) VIRGINIA D. JENCKS. (Seal)

Witness:

.....

.....

* * * * * * * * *

Government's Exhibit 16, being received in evidence, reads in words and figures as follows:

("G-16")

No. .....

Date Aug. 3, 1951

The American Natonal Bank, Silver City, New Mexico

In receiving items for depost * * * at close of business on day deposited.

Authorized Signature
(S.) CLINTON E. JENCKS,
(S.) VIRGINIA D. JENCKS.

Mailing Address Box 436, Bayard

Occupation Union Representatve

Mr. Williams:
That is all we have.

(Witness excused.)

* * * * * * * *

Mr. Williams:
Judge, there seems to be some confusion as to whether or not we offered "G-14" as to the signatures of Jencks, and whether or not it went in evidence. If not, I ask that it be admitted in evidence now.

The Court:
All right.

Mr. Williams:

Just for the signatures, as I did before.

Government's Exhibit 14 reads as follows:

Appointment of Deputy

The Grant County State Bank, Bayard, New Mexico

. . . . . or legal representatives of the deceased. We hereby acknowledge to have received two keys to said safe.

(S.) CLINTON E. JENCKS,
(S.) CIPRIANO MONTOYA.

Witness the hand of said Renter this 6th day of April, 1950.

Signature

(S.) CLINTON E. JENCKS,
(S.) CIPRIANO MONTOYA.

Address

.....

Signature

.....

Address

.....

GEORGE F. MESNIG, a witness for the Government, having been duly sworn, in answer to questions propounded, testified as follows:

On Direct Examination.

Questions by Mr. Williams:

Q. What is your name, please?

A. George F. Mesnig.

Q. And your business?

A. I am a Special Agent of the Federal Bureau of Investigation.

Q. What, if anything, is your particular training and line of work?

A. I work as a document examiner in the F. B. I .Laboratory in Washington, D. C., where I perform examinations in all phases of this work, which includes the identification of handwriting, hand-printing, typewriting, and so forth.

Q. Have you testified in other Courts as an expert on handwriting?

A. Yes, I have, many times throughout the United States. I have testified in Canada and in the Virgin Islands.

Q. What training did you have in this work?

A. I attended many classes and lectures on the subject of document identification work in the F. B. I. Laboratory at Washington, D. C. During my training period I worked under a number of the experts in the F. B. I. Laboratory where my work was constantly checked by daily contact with these men. Since my training period I have examined thousands of cases involving many thousands of specimens, the majority of which involved comparisons of known and questioned handwriting.

Q. In preparaton for this trial have you examined certain signatures of Clinton E. Jencks?

A. Yes, I have.

Q. Are you familiar with his signature?

A. Yes, I am.

Q. Is it a hard or an easy signature to identify?

A. I would say relatively easy.

Q. Have you examined the signature, or photostatic copy of it, as appears on "G-14"? (Handing document to witness)

A. Yes, I have.

Q. Have you examined the signature of Clinton E. Jencks appearing on Government's Exhibit 1 or a photostatic copy thereof?

A. Yes, I did.

Q. In your opinion as an expert is the signature of Clinton E. Jencks that appears on "G-14" the same—no, I will reframe that. In your opinion as an expert did the same person sign the name "Clinton E. Jencks" on Government's Exhibit 1 as signed it on Government's Exhibit 14?

A. Yes.

Q. Any question in your mind about it?

A. No, there is none.

Q. I don't know whether you examined all of these or not, but you can now, from the witness stand. Are you able to look at "G-2" (handing document to witness) and tell us whether or not that is the signature of Clinton E. Jencks?

A. Yes, it is: I have previously examined this.

Q. And Government's Exhibit 10? (Handing document to witness)

Mr. McTernan:

I submit, Your Honor, that the question here assumes a foundation which hasn't been laid. There is nothing

here upon which this witness so far can say that any signature is the signature of Clinton E. Jencks. He can say that certain documents were signed by the same person who signed some other documents, but that is as far as the foundation goes.

The Court:

Well, the banker from the Grant County Bank testified that the signature on Exhibit "G-14" was the signature of Clinton E. Jencks, that he personally saw him write it.

Mr. McTernan:

That is right, but it is hearsay as to this witness. This witness can be a witness but he can't overcome the hearsay rule.

The Court:

You are quite right about that. The Court thinks, though, that he is testifying as an expert that the signatures on these exhibits, which the Government proposes I presume later to offer, are the same signatures as the one that the Grant County banker saw him sign.

Mr. McTernan:

I have no objection to that testimony, but the question was put in this form, "Is that the signature of Clinton E. Jencks?"

The Court:

Well, at this time I would say your objection is good about that. The objection is sustained as to that; but the Court will let him testify it is the same as the signature that the banker testified about.

Mr. Williams:
I am almost certain that was my question. If not, I will put it that way.

Q. Is the signature on "G-1" signed by the same person that signed "G-14", in your opinion as an expert?
A. Yes.

Mr. Williams:
I feel certain that was my exact question?

Mr. McTernan:
That was, but not the question that he was asked later.

Q. Now, the signatures on those other instruments, in your opinion as an expert, are they signed by the same person?

Mr. McTernan:
What instruments are we talking about?

Mr. Williams:
All he has in his hand.

The Court:
Let him identify them for the record.

A. It is my conclusion that the "Clinton E. Jencks" signatures on "G-1", "G-2", and "G-10" were prepared by the writer of the "Clinton E. Jencks" signature on Government's Exhibit 14.
Q. Is it your opinion that the signature on "G-9" was made by the same person?

A. Yes, it is my conclusion that the "Clinton E. Jencks" sgnature on "G-9" was priepared by the same individual who prepared the "Clinton E. Jencks" signature on "G-14".

Q. And "G-8"?

A. Yes, it is my conclusion that the "Clinton E. Jencks" signature on "G-8" was also prepared by the writer of the Jencks' signature on "G-14".

Q. And "G-7"?

A. Same conclusion in regard to the signature on "G-7", yes.

Q. And "G-5"?

A. Yes, "G-5" also. The "Clinton E. Jencks" signature on there was prepared by the writer of the "Clinton Jencks" signature on "G-14".

Q. And "G-4"?

A. "G-4", same conclusion in regard to the Jencks' signature.

Q. And "G-13"?

A. It is also my conclusion that the "Clinton E. Jencks" signature on "G-13" was prepared by the writer of the Jencks' signature on "G-14".

Q. And "G-15" and "G-16"? I don't know whether you have previously been furnished those or not. (Hands same to witness)

A. Yes, I have previously seen these also. The "Cinton E. Jencks" signatures on "G-15" and "G-16" were prepared by the writer of the "Clinton E. Jencks" signature on "G-14".

Q. In your opinion as an expert the same person signed all of those instruments?

A. That is right.

Q. I show you here a "Motion for a Continuance", as part of the official records of this Court filed herein January 11th of this year—yesterday, I believe—which

bears the signature, the sworn signature, of Clinton E. Jencks. Will you study that a minute and see whether or not you conclude as an expert the same person signed it as signed those other instruments?

(Witness examines document.)

A. I saw this signature yesterday and it was my conclusion that the "Clinton E. Jencks" on this particular document was prepared by the writer of the Jencks' signature on "G-14" also.

The Court:

That is a motion that hasn't been offered as an exhibit?

Mr. Williams:

We offer this motion for a continuance, filed in this Court, just the page bearing the signature "Clinton E. Jencks."

(The exhibit was then marked "G-17".)

Mr. McTernan:

Isn't that already a part of the record?

The Court:

Yes, the Court thinks it is.

Mr. Williams:

Well, I am offering it here, just the page showing the signature.

The Court:

All right, let it be admitted.

Government's Exhibit 17, being received in evidence, reads in words and figures as follows:

"G-17"

"Of California or such other District as has been unaffected by the evidence and transactions set out above.

"This motion and application is not made for purposes of delay only, but that justice may be done.

Respectfully submitted,
(S.) JOHN T. McTERNAN,
(John T. McTernan),
(S.) E. B. ELFERS,
(E. B. Elfers),
Attorneys for Defendant.

615 Caples Building,
El Paso, Texas.

State of Texas,
County of El Paso.

Clinton E. Jencks, being first duly sworn, upon his oath deposes and says: That he is the defendant in the above styled and numbered cause; that he has read over and is familiar with the matters and facts alleged in the foregoing motion for continuance or, in the alternative, for change of venue, and that the same are within his knowledge true, except when stated upon information and belief, and when so stated, affiant believes them to be true.

(S.) CLINTON E. JENCKS.

Subscribed And Sworn to before me, the undersigned authority, by Clinton E. Jencks on this 8th day of January, 1954.

(S.) BEATRICE N. GOSSETT,
Notary Public in and for El Paso County, Texas."

Mr. Williams:
We pass the witness.

(At this time a recess was had from 12 Noon until 2:00 P. M. the same day, January 12, 1954, at which time proceedings were resumed as follows):

Mr. Williams:
Your Honor, I thought I was through with this witness. I have another matter to cover with him. I may as well take it up now.

The Court:
All right.

(At this point an instrument, consisting of two pages, was marked for identification as Government's Exhibit 18, and was handed to opposing counsel for examination.)

Mr. Williams:
Are we going to call Mr. Upton back? I mean, when we finish this witness, do you want him as the next one to conclude their cross-examination?

The Court:
The Court would like to do so.

Mr. Williams:

You delayed it a few minutes for them.

The Court:

Let's finish this witness and then you can---

Mr. Williams:

The Marshal wants to know who we want next.

Mr. McTernan:

We have some documents that we haven't had an opportunity to look at, but we will try to look at them while the examination of this witness is going on.

Mr. Williams:

We offer Government's Exhibit 18. It is a certified copy of the Notary Public Bond and Oath of Office of one Arthur Flores, filed in New Mexico.

Q. Mr. Mesnig, I ask you to examine the signature of Arthur Flores in the "Notary Public Bond and Oath of Office" as presented to you and ask you whether or not you have examined a photostatic copy of the original of that document? (Handing document to witness)

A. Yes, I have.

Mr McTernan:

Excuse me, Your Honor, I don't understand that question. In order to frame an objection may I understand what the question is directed to? To a photostatic of the exhibit?

Mr. Williams:

I understand he has a photostatic copy of the original, the same as this, a photostatic copy.

Mr. McTernan:

I object to some other document that is not produced here.

A. I have examined this document too.

Q. All right. Have you examined the signature of Arthur Flores on Government's Exhibit 18?

A. Yes, I have.

Q. Have you examined the signature of the Notary Public "Arthur Flores" on Government's Exhibit 1?

A. I have.

Q. In your opinion as an expert witness were they signed by the same person?

A. Yes, they were.

The Court:

Is that the notary who signed the affidavit of Jencks on No. 1?

Mr. Williams:

Yes, sir.

The Court:

All right.

(At this time an instrument, consisting of two pages, was marked for identification as Government's Exhibit 19, and was handed to opposing counsel for examination.)

Q. Mr. Mesnig, have you an enlarged copy of the signature of Arthur Flores as appears on Government's Exhibit 1?

A. Yes, I have.

Q. Will you produce it please?

(Witness complies.)

Q. Does this also show the enlarged copy of the "Clinton E. Jencks" signature on Exhibit 1?

A. Yes, it does.

(The instrument was then marked as Government's Exhibit 20-for-identification.)

Mr. Williams:

We offer this in evidence.

The Court:

So ordered.

Mr. McTernan:

Your Honor, I was just looking at it.

The Court:

Pardon me, I thought you had no objection.

Mr. McTernan:

I would appreciate it, Your Honor, if I could have a moment to look at the document.

The Court:

Sure, of course.

Mr. McTernan:

We object to it, Your Honor, on the ground that no foundation has been laid to show that this witness knows that it is a picture of anything.

The Court:

Objection overruled.

Mr. Williams:

What was the objection?

(The reporter repeated the objection by Mr. McTernan.)

Mr. McTernan:

And particularly a picture of the original signature of either of these persons that it purports to be.

The Court:

Objection overruled.

Q. Do you have an enlarged copy of the signature of Arthur Flores that is the same in your opinion as this signature here (indicating)?

A. Yes, I've got photographic enlargements of the Arthur Flores signatures which appear in the original document of which this is a photostat.

(Whereupon an instrument was marked "G-21" and shown by Mr. Williams to Mr. McTernan.)

Mr. McTernan:

May I have the witness' last answer to that?

(The reporter read the witness' last answer.)

Mr. Williams:

I now offer all of "G-19".

Government's Exhibit 19 reads in words and figures as follows:

"G-19"

"Notarial Commission

State of New Mexico to Arthur Flores

Filed for record August 25, 1948 at 5 P. M.

J. A. Dye, County Clerk

By Florence Bennett, Deputy.

The Governor of the State of New Mexico

To All To Whom These Presents Shall Come: Greeting;

Know Ye, That Having Considered the Indorsement of Reputable Citizens upon the Name of Arthur Flores I do hereby appoint and commission him a Notary Public In and for the County of Grant State of New Mexico, for the period of four years from the 19th day of March A. D. 1948. He is therefore carefully and diligently to discharge the duties of said office by doing and performing all manner of things thereunto belonging in compliance with law.

In Testimony Whereof, I have hereunto set my hand and caused to be affixed the Great Seal of the State of New Mexico.

Done at Santa Fe, this 19th day of March in the year of our Lord One Thousand Nine Hundred and Forty-Eight

THOMAS J. MABRY,
(Seal) Government.

Attest:
ALICIA ROMERO,
Secretary of State.

My Commission Expires March 19, 1952.

State of New Mexico,
County of Grant, ss.

I, George Keener, County Clerk and Ex-Officio Recorder in and for the County of Grant, State of New Mexico, do hereby certify that the foregoing typewritten page to which this certificate is attached, is a true and correct copy of the Notary Public Commission issued to Arthur Flores, which is duly recorded in Book No. 112 at Page 50, Miscellaneous Record.

In Witness Whereof, I have hereunto set my hand and affixed my official Seal this 16th day of November, 1953.

(S.) GEORGE KEENER,
(Seal) County Clerk.

State of New Mexico,
County of Grant, ss.

I, A. W. Marshall, Judge of the Sixth Judicial District of which Grant County, New Mexico, is included, do hereby certify that George Keener, whose name is subscribed to the certificate of the annexed instrument and written thereon, was, at the time of executing such cer-

tificate a County Clerk in and for said county, dwelling therein, duly authorized to make certificate under the Seal of said County, and was official custodian of said record.

In Testimony Whereof, I have hereunto set my hand and had the seal of said Court affixed this 17th day of November, 1953.

(S.) A. W. MARSHALL,
Judge of the Sixth Judicial
District of New Mexico.

Mr. Williams:
I offer "G-18", "20" and "21", Your Honor.

Mr. McTernan:
Will you give me just a moment, Your Honor?

The Court:
Sure.

(Mr. McTernan examines exhibits again.)

Mr. McTernan:
Your Honor, we have already objected to "20", and I simply can't understand what the witness said with reference to "21". There is nothing in the record, as I understand it, to indicate what original this is a photostat of, and if the answer was intended to mean that it is an enlarged photostat of the signature that appears on Government's Exhibit 18, it plainly is not. You can see that from the face of Government's Exhibit 21.

The Court:
Does the witness want to make a statement?

The Witness:

Yes, Your Honor. I can identify these particular signatures. The original "Notary Public Bond and Oath of Office", of which we have a certified copy here marked as Exhibit "G-18", contains three signatures of Arthur Flores. Now, these photographic enlargements are of the three signatures which appear on that original bond and oath of office on file with the Secretary of State of New Mexico. They are the same signatures which appear hereon (indicating). There is one signature on the front and there are two signatures of Arthur Flores which appear on the back.

Mr. McTernan:

May I see the documents again, Mr. Williams?

(Mr. Williams hands documents to counsel.)

Mr. McTernan:

Well, we persist in our objection, Your Honor, and add the further ground that there is no foundation laid to show that this witness knows that these pictures were taken of any document, and especially the document that they purport to be pictures of.

The Court:

Objection overruled.

Mr. Williams:

Then Exhibits "18", "20" and "21" are admitted?

Mr. McTernan:

Your Honor, I don't know whether you ruled on the offer of "18" or not. We object to it on the ground that

the document has not been certified and attested to as required by the applicable Federal rules.

Mr. Williams:

Your Honor, I have an agreement with Mr. Nathan Witt that these documents, official documents, that are certified by State or County officials, and Army of the United States, I agreed at his request that they need not be certified by a District Judge or County Judge, or something of that nature. Isn't that correct, Mr. Witt?

Mr. Witt:

That is correct, Your Honor. I was just checking Mr. McTernan's recollection on that. He misunderstood, and Mr. Williams stated our understanding correctly.

Mr. McTernan:

I will withdraw our objection on that point.

The Court:

All right, they are all admitted in evidence.

Government's Exhibit 18, being received in evidence, reads in words and figures as follows:

"G-1

State of New Mexico
Office of the Secretary of State

Certificate.

I, Beatrice B. Roach, Secretary of State of the State of New Mexico, do hereby certify that the attached photostatic copy is a full, true and correct copy of the

Notary Public Bond and Oath of Office of Arthur Flores which was filed in this office on July 6, 1949. The original thereof is on file in this office.

Given under my hand and the Great Seal of the State of New Mexico, in the City of Santa Fe, the Capital on this 6th day of January AD 1954.

(S.) BEATRICE B. ROACH,
(Seal) Secretary of State.

Note:—All blank spaces must be properly filled out. Bond must contain at least two securities. Fee for filing same in Secretary's office and issuing commission, $2.50.

Notary Public

Bond and Oath of Office

We Arthur Flores as principal, and New Amsterdam Casualty Company as sureties, are held and firmly bound unto the State of New Mexico in the penal sum of Five Hundred Dollars ($500) for the payment of which well and truly to be made we bind ourselves, our respective heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with out seals, and dated this .... day of August nineteen hundred and Forty Eight.

The above obligation is upon this condition:

Whereas, the said Arthur Flores, was on the 19th day of March A. D. 1948, duly appointed and commissioned a Notary Public in and. for the County of Grant from the day of qualification, to qualify within sixty days.

Now, if the said Arthur Flores shall faithfully discharge the duties of his office then this obligation to be void, otherwise to remain in full force and effect.

In the presence of (Principal must sign here)
(S.) ARTHUR FLORES, (Seal)
(S.) JOHN D. BINGHAM, (Seal)
New Amsterdam Casualty Company.

State of New Mexico,
County of Grant, ss.

Acknowledgment.

Personally appeared before me Arthur Flores as principal, and ..... and John D. Bingham, Attorney in Fact for New Amsterdam Casualty Company as sureties, on this 10th day of August, A. D. 1948, and acknowledged that they had executed the foregoing obligation as their free act and deed; and the said ..... and New Amsterdam Casualty Company, securities as aforesaid, being by me duly sworn, deposed and said, each for himself, that he is worth the sum of Five Hundred Dollars over and above his just debts and liabilities and the amount exempt by law from execution in real estate situated within the State of New Mexico.

In Witness Whereof, I have hereunto set my hand and official seal to the day and year first above written.
(S.) RALPH E. BINGAMAN,
(Seal)

My commission expires August 14, 1951.

Note:—The officer taking this acknowledgement must affix his official seal, and state his official title, and if a Notary Public, must show date his commission expires.

Oath of Office.

State of New Mexico,
County of Grant, ss.

I, Arthur Flores having been on the 19th day of March A. D. 1948, duly appointed and commissioned to the office of Notary Public in and for the County of Grant do solemnly swear that I will support the Constitution of the United States and the Constitution and Laws of the State of New Mexico, and faithfully and impartially discharge the duties of my office to the best of my ability, and that I have, during my preceding terms of office, complied with the laws of the State relative to keeping a notary's record. So help me God.

(S.) ARTHUR FLORES.

Sworn and subscribed to before me this 21st day of August in the year of our Lord one thousand nine hundred and Forty Eight.

(S.) RALPH E. BINGAMAN,

(Seal)

My commission expires August 14, 1951.

Note:—The officer taking this acknowledgement must affix his official seal, and state his official title, and if a Notary Public, must show date his commission expires.

Certificate of Record.

And Approval of Bond in the County.

..... County.

Office of the County Clerk

The within Bond is hereby approved and the same has been duly recorded, together with the accompanying oath of office, in Vol. 112 of Miscellaneous Records pages 45-46 this 21 day of August at 11:25 a. m. A. D. 1948.

Witness my hand and official seal the day and year aforesaid.

(S.) J. A. DYE,
County Clerk.

of .....

County, New Mexico.

Note:—This bond and oath must be recorded with your County Clerk before mailing to Secretary of State.

No. 27611

Arthur Flores

Notary Public

Grant County

P. O. Box Santa Rita, Box 709

Bond and Oath

Governor ordered Commission to issue

Qualified Mar. 19, 1948

Commission issued Mar. 19, 1948

Commission expires Mar. 19, 1952

Commission mailed Mar. 19, 1948

I certify that this is my official seal and signature as a Notary Public.

(Signed) ARTHUR FLORES.

"G-20"

Government's Exhibit 20 was thereupon received in evidence and a photostatic copy of this exhibit follows:

stitutional methods.

Amalgamated Bayard District Union of Mine, Mill & Smelter Workers Local 890

(Full name of union, including local name and number)

International Union of Mine Mill and Smelter Workers

(Full name of national or international union of which it is an affiliate or constituent unit)

Signature Clifton E. Jenks

Address Box 98

(Street)

Bayard, New Mexico

(City and State)

(The notary public or other person authorized by law to administer oaths must fill in completely all blank spaces below.)

bed and sworn to before me this 28th day of April 1950

y public or other person authorized by law to administer oaths and take acknowledgments in and

county of Grant, State of New Mexico

mission expires March 19, 1952

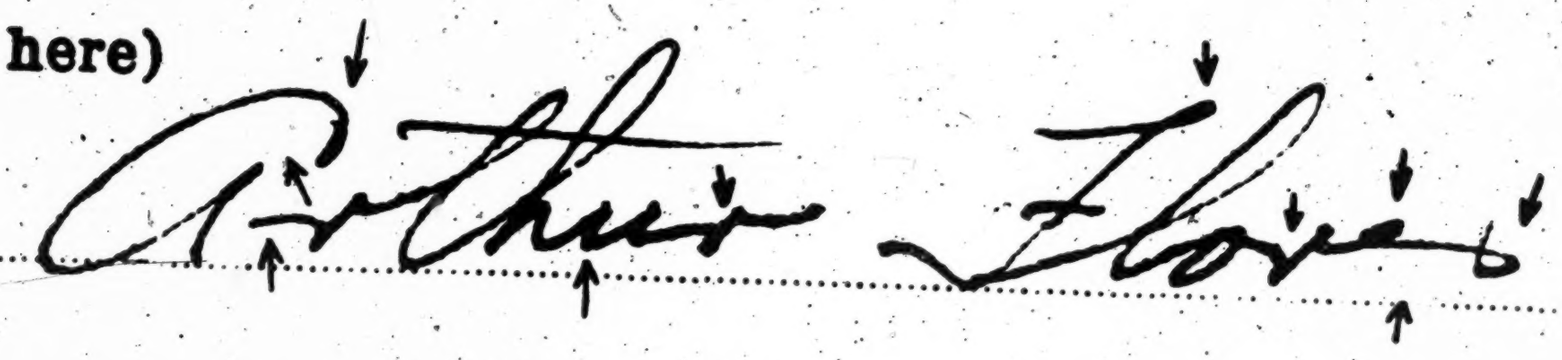
Clifton E. Jenks

(SIGNATURE)

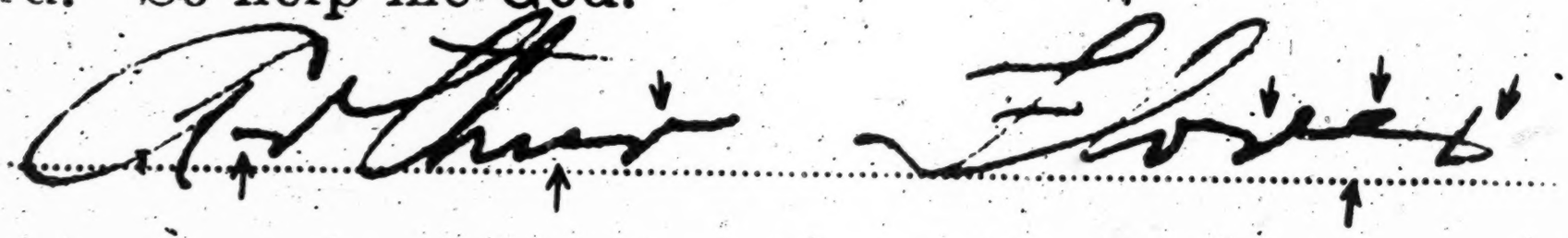
"G-21"

Government's Exhibit 21 was thereupon received in evidence and a photostatic copy of this exhibit follows:

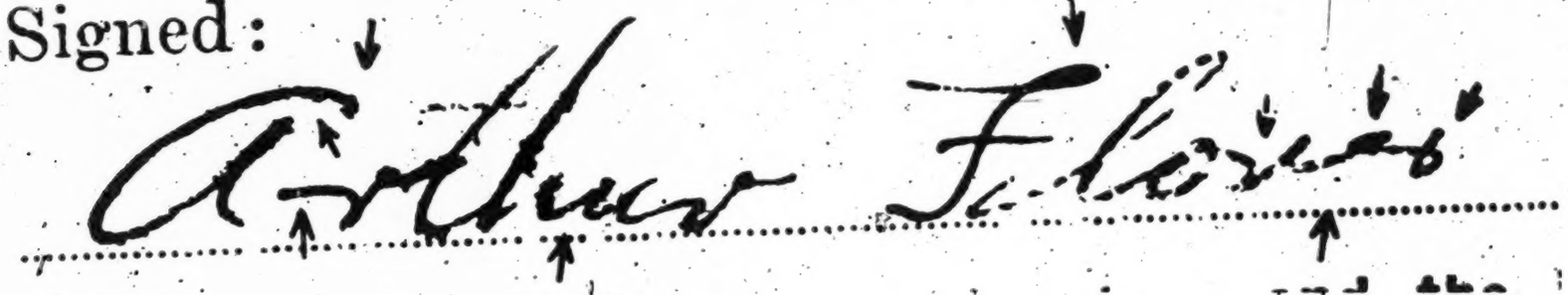
gn here)



rd. So help me God.



Signed:



Questions by Mr. Williams (Cont'd)

Q. All right, Mr. Mesnig, can you point out by these enlargements in front of the jury why you say the signature of Arthur Flores on Exhibit 1 is the same as as on Exhibit 18?

A. Yes. If I may use that chart stand there (indicating), I think it will be a little easier for them to see it.

(The chart stand was then placed in front of the jury box and the witness placed the photographic enlargements on the stand.)

A. On the jury's right (indicating), we have the enlargements of the "Arthur Flores" signatures which appear on Government Exhibit 18, I believe it is, is it not?

Q. Yes.

A. And on the jury's left (indicating) we have an enlargement of the pertinent portion of Government's Exhibit 1. Now, on the bottom portion of Exhibit 1 appears the signature "Arthur Flores" (indicating), the initial stroke of that "A" has a tick, or a tendency to form a tick formation. Now, over in each of the three "Arthur Flores" signatures such as they appear in Government's Exhibit 18, (indicating), we have that same or a similar formation to the initial portion of that Capital "A". Referring again the the Capital "A" in "Arthur", we have a large opening between the initial portion of the "A" and the stem portion. This open space here (indicating) is the portion I am referring to. Now, in the three "Arthur Flores" signatures on the jury's right (indicating), we have that same characteristic appearing, where you have a large opening space in between the initial portion and the stem portion. We do

not have them joined together as is the normal method of preparing the Capital "A". Now, referring to the small "r" in "Arthur", this starts off more or less with a horizontal movement. Instead of starting up, as is the normal manner of preparing a small "r", it starts more or less horizontally, above the line of writing, at some considerable distance. (Indicating). Now, over in the three "Arthur Flores" signatures (indicating) on the jury's right, we have the same characteristic appearing, where the initial stroke starts out to the right and does not appear anywhere near the line of writing but is some considerable distance up above the line of writing. Now, over in the last letter of "Arthur" (indicating), we have another "r". This particular "r" is similar to the initial "r". I would like to point out another characteristic present; that is, the height of the top portion or ending portion of that "r" in relation to the initial portion of that "r". The initial stroke preceding from the "u" is nowhere near as high as the ending portion which sticks up much higher in the air. This same characteristic is present over in the three "Arthur Flores" signatures on the jury's right (indicating). We have the ending portion of that "r" (indicating) much higher than the initial portion, in all three instances which appear in the name "Arthur". I would like also to refer to the manner in which the word "Arthur" appears in relation to the line of writing. By "line of writing" I mean this dotted line (indicating) which appears on Exhibit 1. We find that the majority of that name "Arthur" appears above the line of writing and is not written on the line itself. Referring over to the three "Arthur Flores" signatures on the right (indicating), the same characteristic appears, where most of the name is written above the line of writing. Referring over to the "F" in "Flores" on Exhibit 1, we have a large loop formation

in the upper right-hand portion of the Capital "F", and then we have the bottom portion curving to the left and proceeding over for some distance. Over in the three signatures of "Arthur Flores" we have that loop formation in the upper right-hand corner of all three of the Capital "F's", and the bottom portion projects around and curves around to the left. Here again in "Flores" we have an "r" similar to the "r's" which I referred to in the name "Arthur", and we find that the same type of "r's" appear in the three "Flores" signatures on the jury's right. I also would like to refer to the position of the name "Flores" to the line of writing. On Exhibit 1, this name also was written above the line of writing. Now, referring to the three "Flores' signatures on your right, we have the same characteristic appearing where all three names, or all three times that the name is written it has been written above the line of writing. Referring now to the name "Flores" on Exhibit 1, to the small "e" which follows the "r". There is a tendency to close in this "e" so that you do not have space or light showing between the upstroke and the downstroke. In addition, it is rather a stunted "e" in that it appears relatively high in relation to the "r" and to the "s" which follows it. It does not go down as far as the "r" in the manner in which it should in the normal writing. This same characteristic is present in the three "Flores" signatures on the right in almost each instance, with one exception. There (indicating), in the middle one, we have no loop showing between the upstroke and the downstroke. We have a stunted "e" which is very high in relation to the letter which precedes and follows it. Now, referring again to Exhibit 1, to the ending "s". The ending "s" is made by the initial stroke proceeding horizontally to the right, curving downward in a clockwise direction and then projecting upward instead of

coming back and around as we would expect a small "s" to be formed. Over in the three signatures of "Arthur Flores" on your right, we have that same characteristic present to the ending "s", where the ending stroke projects straight up into the air. Based on these characteristics I reached the conclusion that the writer of the "Arthur Flores" signatures which appear on your right also prepared the "Arthur Flores" signature appearing on Government's Exhibit 1.

Q. Do you have a blowup of the signature of Clinton Jencks as appears on Government's Exhibit 14?

A. I do.

Q. Will you get it, please?

(Witness hands same to Mr. Williams.)

Q. For the purpose of the record, you are using the same blowup of Exhibit 1 for the signature of Clinton E. Jencks?

A. That is right.

Q. Will you hang this up there and show us wherein the signature of Jencks on "1" compares to the signature on "14"?

(Witness proceeds to chart stand and removes the three enlarged "Arthur Flores" signatures, substituting the two "Clinton E. Jencks" signatures.)

Mr. Williams:

Your Honor, that would be Government's Exhibit 22, and we will mark it in a minute for identification. We would like to introduce it at this time.

Mr. McTernan:

The same objection heretofore made, Your Honor, that the foundation has not been laid for this witness to state that that is a picture of what it purports to be.

The Court:

Objection overruled.

Mr. Williams:

So Exhibit 22 is introduced in evidence?

The Court:

It is admitted in evidence.

(Government's Exhibit 22 was thereupon received in evidence, and a photostatic copy of this exhibit appears on the page following.)

"G-22"

19 50

ure Clinton E. Jenke

Address Cipriano Montoya

:sentatives of the deceased. We hereby acknowledge to have rec

Clinton E. Jenke

Cipriano Montoya

162

A. On the jury's right we have photographic enlargements of the two Jencks signatures which appear on Government's Exhibit 14, and we have on the jury's left the photographic enlargement of the pertinent portion of Government's Exhibit 1. We refer now to the "Clinton E. Jencks" signature on Exhibit 1. We have a rather large "C" in the name "Clinton". It has a loop formation, an elongated loop formation in the beginning portion, and the bottom portion of that "C" projects down below the line of writing and below the other letters in that particular name. This characteristic is present also in both of the "Clinton E. Jencks" signatures which appear on the jury's right. We have the elongated loop formation in the initial portion of that letter. In addition, it is a large "C", which projects down below the line of writing and below the other letters which appear in that particular name. Over on the jury's left, on Exhibit 1, we have the initial portion of the small "l" of "Clinton" starting actually to the left of the downward movement of the "C". This same characteristic is present in both of the "Clinton Jencks" signatures which appear on the jury's right. Now, on Government's Exhibit 1, we have no dot on the "i" on "Clinton". Over in both of the "Clinton Jencks" signatures on the jury's right we also have an absence of the dotting of the "i". Referring now to the "n" in "Clinton", we have what might be termed a pointed or a semi-rounded bottom to the "n", which is more or less of a counter-clockwise formation to the "n". By that I mean the motion is against the way the hand of a clock would go, in the bottom portion. Probably it can be seen better in the "n" up here in "Clinton Jencks" (indicating), where this part moves from left to right as if it were going in a reverse direction around the clock. We have the same formation both in Government's Exhibit

1 and in the two "Clinton Jencks" signatures which appear to your right. Now, the initial portion of the small "t" in "Clinton" is not connected to the preceding letter. It starts with a motion downward as if we were putting a hand-printed or a small "t" in there. The same characteristic is present in both of the "Clinton Jencks" signatures to the jury's right. The ending stroke of the small "n" in the name "Clinton" projects high above the letter itself. It curves upward instead of more or less horizontally to the right. This characteristic is present in the two small "n's" at the end of "Clinton" in the two signatures which appear on your right. Referring to the Capital "J" on Exhibit 1, we have a rather large "J" with a big loop at the bottom, and the crossing of the initial stroke of the "J" and the crossing of the ending stroke of the "J" does not meet near the downstroke of the "J" itself, so that we have this crossing here (indicating) some distance to the left of the downward stroke forming the body of the "J". This characteristic is present over in both of the Jencks signatures to the jury's right. We have the large loop formation in the bottom there. The "J" itself is very large, and we have the crossing of the initial stroke and the ending stroke appearing to the left of the downward portion of that "J" in both instances. In Government's Exhibit 1, we have the Greek "e" formation to the small "e" in the name "Jencks." Over in both of the signatures to the jury's right we have the same formation, we have the Greek "e", the only difference being that in one case it is joined to the preceding letter "J" and in the other instance it is not. Over in Exhibit 1, we have an "n" similar to the one I was referring to in the name "Clinton." This same characteristic is present over in the name "Jencks" appearing on the jury's right. Now, the small letter "c" in the name "Jencks" on Exhibit 1, has

a large loop formation at the beginning portion of the letter. Over in the two signatures to your right we have the large loop formation in that "c", in both of the "c's" which appear over there. Here (indicating) we have in the word "workers" a "k" which is made in two strokes. We have the initial stroke coming down and then a movement upward as if the pen had been lifted momentarily and then put down on the paper again to form the remainder of the "k". This "k" is different from the "k" in "Jencks" in that here the pen has not been lifted sufficiently from the paper and has left a tell-tale mark there. However, this appears in the writing directly above the word "Jencks." Now, over on the two signatures to the right, in the first one on the top here, we have the stroke downward. We have the motion to the right. We see a double line at the bottom in both instances. Then we have this curleycue formation here where the pen was momentarily lifted and then put down on the paper to form the curving portion of the "k" similar to this "k" here (indicating). Now, referring over to the "s" in "workers" and the "s" in "Jencks", we have again formations of a different nature. In one occasion in the word "Jencks" in Exhibit 1, we do not have an ending stroke on the "s". Up in the word "workers", two lines above that, we have more or less a similar formation, and directly underneath that, a little to the left, we have the ending stroke instead of stopping up here near the initial portion of the "s" it curves downward beyond the line of writing for some distance. Referring over to the two Jencks signatures on the jury's right, we have the stroke completing the ending "s" coming over to the initial portion and then projecting downward in both instances, in a manner similar to the manner in which it appears in this particular word (indicating). It is my conclusion that the writer of the two

Jencks signatures on Government's Exhibit 14 also prepared the "Clinton E. Jencks" signature on Government's Exhibit 1.

Mr. Williams:

You may have the witness.

Mr. McTernan:

Your Honor, may we have a few moments to examine these enlargements before proceeding with the cross-examination?

The Court:

Yes.

(Whereupon the enlargements were taken off the chart stand by Mr. McTernan with the help of the witness, Mr. Mesnig, after which both Mr. McTernan and Mr. Witt examined the enlargements.)

The Court:

Do you now want them back on the frame, Mr. McTernan?

Mr. McTernan:

Yes, Your Honor.

(The enlargements were then put back on the stand.)

On Cross-Examination.

Questions by Mr. McTernan:

Q. Mr. Mesnig, have you ever seen—I will withdraw that. Have you ever seen Government's Exhibit 1 before you came here today?

A. Yes, I have.

Q. And do you know from what this document—

The Court:

A little louder, please.

Q. Do you know what document Government's Exhibit 20 was made from?

A. Government's Exhibit 20 is an enlargement of a portion of the original of Exhibit 1.

Q. Well, who made the photostat and the pictures you have used?

A. The photographic enlargement of a portion of Exhibit 1 was made under my supervision in the F. B. I. Laboratory in Washington, D. C.

Q. When?

A. It was made approximately November 9th of this year.

The Court:

He means, of course, 1953. He said "this year."

The Witness:

Pardon me. I do mean 1953.

Q. And did you have at that time in possession Government's Exhibit 1?

A. Yes, I did.

Q. And do you know whether the enlargement which is identified here as Government's Exhibit 20 was itself made from Government's Exhibit 1, or whether it was made from a photograph of Government's Exhibit 1?

A. I will explain what happened.

Q. Will you just answer my question, Mr. Mesnig?

A. It was made from the negative which was made of Exhibit 1, except it was enlarged six times, the original negative.

Q. The negative was enlarged six times?

A. Right.

Q. Do you have any photostats of Government's Exhibit 1 in your possession now?

A. Photographs?

Q. Yes?

A. Yes, I do.

Q. May I have one, please?

(Witness hands document to counsel.)

Q. The document that you have handed me, Mr. Mesnig, is this what is known as a positive or a negative?

A. Well, now, you are speaking of a photostat. This is a photograph, which is a photograph made from the original negative photograph.

Q. Now, it is possible, is it not, to make a photostat from this photograph that you just handed me?

A. Yes, you could photostat that, which is an entirely different process than photographing.

Q. Now, with reference to these comparisons you have been making in connection with the "Flores" signature, are you convinced without reservation that the "Flores" signature which appears on Government's Exhibit 20 was made by the same person that made all of the—are you convinced that the "Flores" signature which appears on Government's Exhibit 20 was made by the same person as the person who made each of the three "Flores" signatures on Government's Exhibit 21?

A. Yes, I am.

Q. You have no reservations about it, is that right?

A. No, I do not.

Q. Now, have you looked at the handwriting in Government's Exhibit 20 below the line which contains the words, "The notary public or other person authorized by law to administer oaths must fill in completely all blank spaces below"?

A. Yes, I have.

Q. You are satisfied that all of the handwriting in those blank spaces was made by the same person?

A. I wouldn't say that it was because I did not have comparable handwriting to compare with that other writing, but there are indications that it could have been.

Q. Is that the best you can say on that, that it could have been?

A. Yes, because without comparable letters or words you cannot make a comparison between two writings. For instance, you cannot compare John Jones with John Smith. You do not have similar word combinations. You cannot tell how the letters are made.

Q. Can you make a comparison if you have some letters, if you have two letters in the two writings?

A. You can make a comparison. As to whether you could reach a definite opinion or not is problematical.

Q. Now, with reference to the signature of Mr. Flores, does the fact that the instructions on the form say "The notary public or other person authorized by law to administer oaths must fill in completely all blank spaces below", does that in any way affect your conclusion as to whether all of the handwriting in the blank spaces below was filled in by the same person?

A. No, I wouldn't say so.

Q. Now, in comparing the four signatures, the one on Government's Exhibit 20 and the ones on Government's Exhibit 21, you rely, don't you, very heavily on the similarity of the letters "A" and the letters "r" in those various signatures?

A. Those are just some of the characteristics. It is based on all of the characteristics which are in there.

Q. Well, in making comparisons do you lay more stress on letters that appear more than once in the signature that you are comparing?

A. Not necessarily. It depends on the characteristics in that particular letter itself.

Q. Well, let us notice the "r's" on the signature on Government's Exhibit 20. There are two "r's" in the word "Arthur" and one in the word "Flores"?

A. That is right.

Q. And as I recall your direct testimony you mentioned the characteristics of those "r's", didn't you?

A. That is right. It appeared three times.

Q. And the fact that it appeared three times gave that letter an additional significance to you in making a comparison?

A. I wouldn't say so.

Q. And the letter "r" appears three times on this signature over here? (Indicating)

A. Three times in each of those signatures.

Q. That is what my question was intended to say. Now, you found in all of those "r's" in making the comparisons, the characteristics that the "r" begins with a horizontal stroke above the line, right?

A. When it is an initial "r" not connected to a letter preceding it.

Q. And even when it is connected with a letter preceding it there is a more or less horizontal stroke; initial stroke, that is?

A. Well, in most cases that is true.

Q. If it isn't a horizontal stroke it is a stroke slightly down, isn't that right?

A. If you are referring to the small "r" following the "u" that is not true because the ending stroke of the

"u" is down here (indicating) and then it proceeds upwards, if anything to the right; and the second one here (indicating) proceeds more or less horizontally; and this one (indicating) proceeds upward again.

Q. Slightly upward, is that right? It is not like an acutely upward stroke?

A. No, that is right.

Q. And here in "Flores" (indicating) the initial stroke of the "r" is slightly downward?

A. Right. We would expect that because it happens to be following an "o" which is a letter which ends at the top of the letter rather than at the bottom such as the "u" does.

Q. But in these three signatures over on this side, on the jury' right, (indicating), in Government's Exhibit 21, the initial stroke of the "r" coming off the "o" is slightly downward as in the first and third, or virtually horizontal as in the middle one, is that right?

A. That is true.

Q. And that is one of the characteristics that you relied on in reaching your conclusion that all those four signatures were written by the same hand?

A. I considered that, yes.

Q. Now, did you also give consideration, Mr. Mesnig, to the formation of the "r", the kind of "r" it is?

A. Yes.

Q. In all of those instances?

A. I did.

Q. I get twelve letters in the signature, is that right? Is that the count you make?

A. Yes, that is right.

Q. And out of the twelve letters three of them are "r's"?

A. That is right.

Q. Now, you also relied on the manner in which the Capital "A" is written in comparing these signatures, did you not?

A. That is true.

Q. Now; the characteristic that you emphasized was a little tick at the beginning of the stroke?

A. That is right.

Q. And the open loop between the top of the "A" as it comes around and the down stroke or bottom stem?

A. That is true.

Q. And that, you concluded, had appeared in each of the Capital "A's" that appear on the right?

A. That is true. Of course, there are variations that exist between each one of the "A's" in the three signatures because no one writes exactly the same each time they write. There are normal variations in everybody's writing.

Q. I notice that the opening in Government's Exhibit 21 is smaller as compared to the opening in the "A" on Government's Exhibit 20?

A. That is right. As I just stated, there are variations among these three signatures (indicating), as well as between this one (indicating).

Q. Do you consider the smallness of the opening of the bottom signature on Government's Exhibit 21 and the size of the opening on the signature on Government's Exhibit 20 as normal variations in a person's handwriting?

A. Yes, I would.

Q. Now, did you ever see the original document on which appeared the signatures which are pictured here on Government's Exhibit 21?

A. No, I did not.

Q. What are those enlargements made from, if you know?

A. Those are made from photographs made of the original document in the Secretary of State's office.

Q. And did you make those photographs in the Secretary of State's office?

A. No, I did not.

Q. Did you see them made?

A. No, I did not.

Q. Do you know who made them?

A. No, I do not know who made them.

Q. They just came to your desk, is that right?

A. They were submitted to me by the Albuquerque Office of the F. B. I.

Q. And that is all you know as to how they were made?

A. That is right.

Q. And do you know whether the original picture that was taken of those three signatures was a photostat or a photograph?

A. I know it was a photograph, and I compared those signatures—

Q. Just a minute, I didn't ask you—

Mr. Williams:

Let him finish.

The Court:

No, he will confine his answers to the questions.

Q. Do you know the document that came to you from the Albuquerque Office of the F. B. I. was a photograph made of the original document or a photograph made of a photostat of the original document?

A. It was submitted to me as being a photograph of the original.

Q. I didn't ask you how it was submitted to you. I want to know what your knowledge is?

A. From my knowledge of seeing photographs I would say it was a photograph of the original.

Q. Do you know from having participated in the process whether the document that came to you was a picture of the original or a picture of a photostat; do you know?

A. Not positively, but just from my experience I would say it was a photograph of the original. Also, from the information submitted to me at that time.

Mr. McTernan:

I move to strike that on the ground it is hearsay, Your Honor.

The Court:

Motion is granted. That last part is hearsay and the jury will disregard it.

Q. Now, Mr. Mesnig, would you say that the "A" in "April" on Government's Exhibit 20 was made by the same hand that made the "A" in "Arthur" in Government's Exhibit 20?

A. I wouldn't say positively. That "A" has been formed with two different strokes. Apparently the pen didn't operate properly on the first motion, and that would distort or change the entire formation of that letter.

Q. Or the hand that made the downstroke and then over to the left, I am pointing to it with my pencil, might not have been the hand that made the beginning loop of the "A", isn't that right?

A. I wouldn't say one way or the other.

Q. Let me ask you this, the downstroke and then the stroke over on the left, that I am pointing out now, appear to be clean lines, don't they?

A. That is right.

Q. And the line in the loop of the "A" at the beginning of it appears to be fuzzy, doesn't it?

A. That is true. That is probably due to the fact that the pen didn't have much ink on it, and then, either it was a fountain pen and someone jerked at it, or else it was inserted in an inkwell, and that is why we have a heavier line to the initial portion of it. That is what my guess would be.

Q. But you are guessing?

A. That is right.

Q. And you weren't there?

A. I wasn't there, no.

Q. Would you say, Mr. Mesnig, that the hand that wrote the "r" in "April" on Government's Exhibit 20 is the same hand that wrote the "r" in "Arthur Flores" in all these other photostats?

A. With a portion of that faintly seen, I wouldn't say for sure. As I say, there are indications that they were probably prepared by the same person.

Q. I haven't asked you that. I have asked you if you can say that the "r" in "April" on Government's Exhibit 20 was made by the same hand that made the "r's" in "Arthur Flores" in each of the four signatures that you have been comparing here. Can you answer that "yes" or "no"?

A. It is made in a similar manner. That is all I can say.

Q. Now, the "r" in "Arthur Flores", as I understand your testimony, when it is an initial letter the beginning stroke is almost horizontal?

A. That is right.

Q. And when it comes off a preceding letter it is slightly downward, if it is off an "o", and sometimes virtually horizontal such as in the second one on Government's

Exhibit 21, or it slopes downward a little from the "o" to go into the "r", right?

A. I believe that is so. We do not have a known "p"—

Q. I didn't ask you anything about a "p"?

A. Well, in order to compare we have to have a "pr" combination to see how they are done in a specimen.

Q. As a matter of fact, in every signature here in which an "r" appears following another letter the "r" is connected with the preceding letter, isn't it?

A. That is true. That is also true here (indicating) except that the pen didn't write.

Q. Mr. Mesnig, you don't know that?

A. I can see that the ink faded out there. You can see the faint outlines on the paper if you have the original.

Q. You mean that is the interpertation you place on that photograph?

A. Let me see the original.

Q. (Hands document to witness). That is Exhibit 1. Do you see any fading connecting line there?

A. Yes, I do.

Mr. McTernan:

I ask that the jury be permitted to look at Exhibit 1.

The Court:

They may be permitted to look at it any time.

Mr. McTernan:

May they look at it now?

The Court:

To compare it, yes.

Mr. McTernan:

I wonder if in order to expedite the jury's examination of the document we might direct their attention to the line of the document that is now in issue because that portion doesn't stand up as clearly as it does on the photostat.

The Court:

Yes.

Mr. McTernan:

(To jury). The line on which "April" appears that Mr. Mesnig is pointing out is on this line (indicating), just below the perforation which begins "Subscribed and sworn to before me . . ." (Hands document to jury.)

(At ths point a document was marked "D-1".)

Q. Now, Mr. Mesnig, I show you Defendant's Exhibit 1. This is the photograph of the Government's Exhibit 1 that you handed me a few minutes ago, isn't it?

A. That is right.

Mr. McTernan:

We offer it in evidence, Your Honor.

The Court:

Admitted.

("D-1" was thereupon received in evidence and a photostatic copy of this exhibit appears on the page following).

Form NLRB-1081
(6-49)

[redacted]

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

AFFIDAVIT OF NONCOMMUNIST UNION OFFICER

(See instructions on reverse)

RECEIVED
MAY 4 1950
National Labor Relations Board
10th Regional Sub Office
El Paso Tex.

The undersigned, being duly sworn, deposes and says:

1. I am a responsible officer of the union named below.

2. I am not a member of the Communist Party or affiliated with such party.

3. I do not believe in, and I am not a member of nor do I support any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods.

Amalgamated Bayard District Union of Mine, Mill & Smelter Workers
(Full name of union, including local name and number)

Local 890

International Union of Mine Mill and Smelter Workers
(Full name of national or international union of which it is an affiliate or constituent unit)

Signature Clinton E. Jencks

Address Box 98
(Street)

Bayard, New Mexico
(City and State)

(The notary public or other person authorized by law to administer oaths must fill in completely all blank spaces below.)

Subscribed and sworn to before me this 28th day of April 1950

Q. Now, Mr. Mesnig, looking at that photograph do you see any trace of a joinder betwen the "p" and the "r" in "April"?

A. Yes, I see a faint line impression where that pen left no ink on the paper but still left a faint impression on there.

Mr. McTernan:

May we show this to the jury, Your Honor, on the same question?

The Court:

Yes.

(Mr. McTernan shows same to jury).

(At this point another document was marked "D-2").

Q. This is Government's Exhibit 18 (indicating); would you say in your experience that that is a photostat or a photograph?

A. That is a photostat.

Q. Now I show you Defendant's Exhibit 2-for- identification. Can you say whether that is a photograph or a photostat?

A. Appears to me to be a photostat.

Q. Is it a photostat of Government's Exhibit 1? (Handing document to witness.)

A. Yes, it appears to be.

Q. Now, just hold on to Government's Exhibit 1 for a minute. Do you notice a date stamp on Government's Exhibit 1 towards the upper right-hand corner of that document?

A. Yes, I do.

Q. Do you see a photostat of that or any image of that date stamp towards the upper right-hand corner of Defendant's Exhibit 2?

A. No. That is probably due to the fact—

Q. Do you know what you are saying now, or are you just offering an opinion?

A. Well, based on experience—

Q. Well, do you know anything about what happened to this document?

A. No, I do not. It does not appear on that document.

Q. And do you notice the perforations that appear in the middle of Government's Exhibit 1?

A. That is right.

Q. Those are holes through the paper that are not marked on the paper?

A. That is right.

Q. Do you see those holes on Defendant's Exhibit 2-for-identification?

A. No. The only evidence of that are a few little dots which show up underneath "International" and down here where it says "The notary public", and also over on the back, over on the right side we have other dots showing which indicate that a portion of that was brought up by the photostating process. That is why photographs are fare more accurate than a photostat.

Q. Well, would you say, Mr. Mesnig, that the failure to show the date stamp which appears on the original of Government's Exhibit 1, the failure to show that on Defendant's Exhibit 2-for-identification, is that the date stamp was covered up when the photostat, Defendant's Exhibit 2-for-identification, was made?

A. That would be difficult to say. I would say it would probably be due to the photostating process, if anything, although it is possible that it could have been covered up.

Q. Let me see if I can help you on that. You see no horizontal line below the words "Union Officer" and above the word "Union Officer" on the original?

A. That is right.

Q. But you do see them on the duplicate?

A. That is right.

Q. Does that appear to you that maybe some paper was put over the date stamp so it wouldn't show on the photostat?

A. As I say, I wasn't there. I didn't make an examination for that particular purpose.

Q. Now, do you notice the size of the letters "C" and "E" in the word "Officer" on the original of Government's Exhibit 1?

A. Yes.

Q. Do those letters look larger or smaller than the corresponding "C" and "E" on Defendant's Exhibit 2-for-identification?

A. They look about the same. It is possible there might be a very little enlargement or reduction due to the expansion of the paper in the photostating process.

Q. Or because something was put over that paper to obliterate part of the photostat, isn't that right?

A. I don't believe anything was covering the "Officer" from my observation of both of these documents.

Q. Let me ask you this; the date stamp on Government's Exhibit 1 goes right through the word "Officer"?

A. That is true. As a matter of fact, there is a portion of it still visible through the letters "C" and "I".

Q. In the original?

A. No, on the photostat. There is a heavy part of the stamp that is still present (indicating).

Q. Now, you mean that the blur between the "I" and the "C" in the photostat corresponds to the markings on Government's Exhibit 1?

A. That is right.

186

Form NLRB 1081
(6-60)

[redacted]

C.S.

12A

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

AFFIDAVIT OF NONCOMMUNIST UNION OFFICER

(See instructions on reverse)

The undersigned, being duly sworn, deposes and says:

1. I am a responsible officer of the union named below.

2. I am not a member of the Communist Party or affiliated with such party.

3. I do not believe in, and I am not a member of nor do I support any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods.

Amalgamated Bayard District Union of Mine Mill & Smelter Workers
Local 590
(Full name of union, including local name and number)

International Union of Mine Mill & Smelter Workers
(Full name of national or international union of which it is an affiliate or constituent unit)

Signature Clifton E. Jenks

Address Box 98
(Street)

Bayard, New Mexico
(City and State)

Q. In your opinion?

A. That is right.

Q. What, in your opinion, caused the horizontal lines over the word "Officer" and under the word "Officer" in the photostat right at the point where the date stamp went through the word "Officer" on the original?

A. I would hestiate to say. I don't know.

Q. Now, with reference to the perforations on Government's Exhibit 1, they are found right in the printing of the words "The notary public", isn't that right?

A. That is correct.

Q. And you don't see that on Defendant's Exhibit 2-for-identification, you just se the faintest indication of those holes?

A. That is right, just a few little dots through there.

Q. Now let me ask you this; do you see on the original any horizontal line over the word "other" and the word "person"?

A. No.

Q. But you do see it on the photostat?

A. That is right.

Q. From this isn't it possible, Mr. Mesnig, that somebody covered up the perforations so as not to have them show up on the photostat?

A. I can't say what actually did happen.

Q. Is it possible, from your experience?

A. It is possible.

Q. As a matter of fact, it is possible that in making this photostat these two areas of the original were covered up so as not to show on the photostat, isn't that right?

A. I really don't know but it is possible.

Mr. McTernan:

Now we ask the Government to stipulate that Defendant's Exhibit 2-for-identification was handed to the defendant by the Government on October 23, 1953, pursu-

ant to the order of this Court to furnish the defense with a copy of the affidavit in question.

Mr. Williams:
Shall I be sworn or just make a statement?

Mr. McTernan:
I am asking for a stipulation.

Mr. Williams:
I state that I deliberately took those Government stamps off when I had it photostated.

Mr. McTernan:
I am not asking for that. I am asking for a stipulation that Defendant's Exhibit 2-for-identification was given to me purported to be a copy of the affidavit alleged in the complaint, and pursuant to the order of this Court on October 23, 1953.

Mr. Williams:
Are you going to make the stipulation or what?

Mr. McTernan:
I know what I want to stipulate.

The Court:
Well—

Mr. Williams:
Your Honor. We had a hearing on this and you agreed that we give them a copy of the affidavit, a photostatic copy. I took that meant as it was filed in our office, so I deliberately took off all the stamps that the Government had put on it.

Signature [redacted]

Address Box 98
(Street)
Bayard, New Mexico
(City and State)

(The notary public or other person authorized by law to administer oaths must fill in completely all blank spaces below.)

Subscribed and sworn to before me this 28th day of April 1950

A notary public or other person authorized by law to administer oaths and take acknowledgments in and for the county of Grant, State of New Mexico

My commission expires March 19, 1952

Arthur Flores
(SIGNATURE)

[SEAL]

WARNING.—The attention of persons filing this form with the Board is directed to Section 35 (A) of the criminal code, which provides that any person willfully making or causing to be made any false or fraudulent statements or representations in any matter within the jurisdiction of the Board shall be fined not more than $10,000 or imprisoned not more than 10 years, or both.

[redacted]

[redacted]

Mr. McTernan:

I think Mr. Williams should be subject to cross-examination.

Mr. Williams:

I can be sworn if you want to.

The Court:

No, that won't be necessary.

Mr. Williams:

I had the photographer take off those Government stamps and I told Mr. McTernan I did, and then I showed him the original with the things on it and he took it all down in his notes, the dates that it was filed.

Mr. McTernan:

I am still asking for a stipulation that this was given to the defense as a copy of the alleged affidavit pursuant to the order of this Court on October 23rd.

Mr. Williams:

With an explanation that the date stamps were taken off, yes.

The Court:

You will stipulate, them, that you did give it to him with the stamps removed?

Mr. Williams:

Yes, and told him so, and gave him the dates off the original.

Mr. McTernan:

Now, I would like to cross-examine him because I challenge the last statement.

Mr. Williams:
I have no objection. Shall I take the stand now?

The Court:
Can't we get through with this witness first?

Mr. McTernan:
All right, Your Honor. I offer Defendant's Exhibit 2-for-identification as evidence of what can be done with photostats and photographs.

The Court:
All right.

Mr. McTernan:
Is it received, Your Honor?

The Court:
Yes.

Mr. McTernan:
No further questions.

The Court:
Any re-direct examination of this witness?

Mr. Williams:
Yes.

(Defendant's Exhibit 2 was thereupon received in evidence by the Court, and a photostatic copy of same appears in the two pages following).

Make [illegible] Wilson
(Full name of union, including local name and number)

Local 550
International Union of Mine Mill and Smelter Workers
(Full name of national or international union of which it is an affiliate or constituent unit)

Signature Arthur E. Jenks

Address Box 98
(Street)

Bayard, New Mexico
(City and State)

(The notary public or other person authorized by law to administer oaths must fill in completely all blank spaces below.)

Subscribed and sworn to before me this 28th day of April 1950

A notary public or other person authorized by law to administer oaths and take acknowledgments in and for the county of Grant, State of New Mexico

My commission expires March 19, 1952

Arthur Flora
(SIGNATURE)

[SEAL]

D-2

WARNING.—The attention of persons filing this form with the Board is directed to Section 35 (A) of the criminal code which provides that any person wilfully making or causing to be made any false or fraudulent statements or representations in any matter within the jurisdiction of the Board shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

187

[redacted]

INSTRUCTIONS FOR THE USE OF THIS FORM

WHO MUST FILE.—This affidavit must be filed by each officer of a labor organization before that organization may receive the help of the National Labor Relations Board. An affidavit must be on file for each officer listed in your constitution and by-laws.

WHERE TO FILE.—NATIONAL AND INTERNATIONAL LABOR ORGANIZATIONS must file this affidavit with the Affidavit Compliance Branch, National Labor Relations Board, Washington 25, D. C.

LOCAL LABOR ORGANIZATIONS must file this affidavit with the Regional Office of the National Labor Relations Board with which they usually file cases.

WHEN TO FILE.—This affidavit is good for only one year from the time it is signed and must be renewed each year. Each time a new officer is elected or appointed, he must file this affidavit. If an officer is reelected, it is not necessary to file a new affidavit unless the affidavit on file with the National Labor Relations Board is more than one year old.

HOW TO PREPARE THIS AFFIDAVIT:

a. Read carefully items 1, 2, and 3 of this affidavit.

b. Fill in the full name of your labor organization, including the local name and number.

If your organization is affiliated with a national or international organization, give the full name

reelected, it is not necessary to file a new affidavit unless the affidavit on file with the National Labor Relations Board is more than one year old.

HOW TO PREPARE THIS AFFIDAVIT:

a. Read carefully items 1, 2, and 3 of this affidavit.

b. Fill in the full name of your labor organization, including the local name and number.

If your organization is affiliated with a national or international organization, give the full name
of the national or international.

(EXAMPLE)

Plastic, Button and Novelty Workers Union, Local 306
(Full name and local number)

International Ladies Garment Workers Union--AFL
(Full name of national or international)

c. The officer must sign his name in the presence of a notary or other person authorized by law to administer oaths.

d. The officer must give his full home address; be sure to give the street address, city and State.

GPO 8718 9-1-49-50,000-26-037

On Re-Direct Examination.

Questions by Mr. Williams:

Q. In your best opinion, Mr. Mesnig, would you say that the author of all of that writing there (indicating), "28th of April, Grant County, New Mexico", is the author of the signature of Arthur Flores or not?

A. I couldn't definitely say.

Q. In your best opinion could you say?

A. I would resitate to say one way or the other, but there is a possibility, there are indications that it was.

Q. What are some of the similarities you see?

A. The small "r" in "Grant" (indicating). The small "r" in "March". That is practically all that is present in those particular writings which are comparable. That is why I would hesitate one way or the other.

Mr. Williams:

That is all.

On Re-Cross-Examination:

Questions by Mr. McTernan:

Q. Mr. Mesnig, one of the characteristics you pointed out in showing what you conceived to be the similarity between the "Flores" signatures on Government's Exhibit 20; one of the characteristics which you relied on in reaching your judgment that the "Arthur Flores" signature on Government's Exhibit 20 was made by the same person as the signatures on Government's Exhibit 21 was this stunted "e"? (Indicating.)

A. That is right, when there is an "es" combination. I mean, an "res" combination. We have no other "res" on the rest of the writing here.

Q. As I recall your direct examination you did not qualify the characteristic of the "e" as appearing only in

an "res" combination but as a characteristic as it appeared in the signature?

A. That is right. It is the only way it appears on the signature. Consequently, that is the way I considered it.

Q. Now, I call your attention to the "e's" in "New Mexico" in Government's Exhibit 20, from the word "New" and the word "Mexico"; those are not stunted "e's", are they?

A. No, they are not. Also, they don't follow an "r" and don't precede an "s".

Q. They don't have a loop either?

A. No, sir.

Mr. McTernan:

That is all.

Mr. Williams:

No further questions.

(Witness excused).

* * * * * * * *

The Court:

I think we will take our afternoon recess at this time. Mr. McTernan, maybe you and the District Attorney can stipulate during the recess about this problem that you had concerning this affidavit, or copy of it.

Mr. McTernan:

I will be very happy to do that, Your Honor.

(Whereupon a fifteen-minute recess was taken until 3:45 P. M., at which time proceedings were resumed as follows):

Mr. McTernan:

Your Honor, pursuant to your suggestion we have been able to agree on a statement.

The Court:

All right, what is the stipulation?

Mr. Williams:

Pursuant to the agreement made in this Court that I would give them a photostatic copy of the affidavit, which is now marked as Government's Exhibit 1, the original, I took it that that meant in the condition it was given to us. I therefore took off all stamps that the Government had put on it and I sent or gave it to Mr. Elfers without explanation. Mr. McTernan noticed it didn't have any stamps on it and came to my office and I showed him this one (indicating), or one similar to it, with the stamps on it.

Mr. McTernan:

And we ask now, Your Honor, that the document that Mr. Williams referred to as the one with the stamps on it be now received in evidence as defendant's exhibit next in order.

The Court:

All right.

(The document was then marked "D-3").

Mr. McTernan:

I take it we can stipulate that this document, Defendant's Exhibit 3, that was just admitted, is a photostat, or don't you know?

Mr. Williams:

I don't know if that is a photostat or a photograph, or something. They all look alike to me.

Mr. McTernan:

May we at this time exhibit Defendant's Exhibit 2 and Defendant's Exhibit 3 to the jury?

The Court:

Yes.

(A photostatic copy of Defendant's Exhibit 3, having been received in evidence, is shown on the page following).

192

Form NLRB-1028
(5-48)

[redacted]

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

AFFIDAVIT OF NONCOMMUNIST UNION OFFICER

(See instructions on reverse)

The undersigned, being duly sworn, deposes and says:

1. I am a responsible officer of the union named below.

2. I am not a member of the Communist Party or affiliated with such party.

3. I do not believe in, and I am not a member of nor do I support any organization that believ
or teaches, the overthrow of the United States Government by force or by any illegal or un
stitutional methods.

Employees Assn. Beyond Detroit Union of Mine, Mill & Smelter Wkrs
Local 890
(Full name of union, including local name and number)

International Union of Mine, Mill & Smelter Workers
(Full name of national or international union of which it is an affiliate or subordinate body)

Signature: Charles E. Goode

Address: Box 95
(Street)
Bayard, New Mexico
(City and State)

International Union of Mine, Mill & Smelter Workers
(Full name of national or international union of which it is an affiliate or subordinate body)

Signature: Charles E. Goode

Address: Box 95
(Street)
Bayard, New Mexico
(City and State)

(This notary public or other person authorized by law to administer oaths must fill in completely all blank spaces below.)

Subscribed and sworn to before me this 28th day of April 1950

A notary public or other person authorized by law to administer oaths and take acknowledgments h
for the county of Grant, State of New Mexico

My commission expires March 19, 1952

Gethen Elam
(SIGNATURE)

[SEAL]

D-3

WARNING.—The attention of persons filing this form with the Board is directed to Section 35 (A) of the statute which provides that any person wilfully making or causing to be made any false or fraudulent statements or representations in any matter within the jurisdiction of the Board shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

Q. And then do you know when you got out of the Army?

A. I rejoined the Communist Party in Denver, Colorado.

Q. Do you know when you were discharged from the Army?

A. In January of 1946.

Q. And about when did you rejoin the Communist Party in Denver?

A. Shortly after my discharge from the Army.

Q. Early in 1946 then?

A. Yes, sir, it was. I was discharged in the latter part of January and I believe I rejoined the Communist Party in the early part of February of 1946.

Q. Who, if anyone, was influential in getting you to go back into the Party?

A. When I rejoined the Communist Party?

Mr. McTernan:

We object to this question, Your Honor, as calling for an opinion and conclusion.

The Court:

Objection sustained.

Mr. Williams:

Judge, the question was who, if anyone, was influential in getting him to join the Party.

The Court:

Well, that calls for a conclusion.

Q. Do you know who went with you to rejoin the Party?

Mr. McTernan:

I object to this on the ground that it assumes facts not in evidence, and is leading and suggestive.

The Court:

Well, the Court will overrule the objection to that, as to who, if anyone went with him at the time and place when he rejoined the Communist Party. You can answer that.

Q. Who went with you when you went up to rejoin the Party?

A. Mr. Graham Dolan.

Q. How long had you known him?

A. I would say at that time I had known him—well, not very long. May I explain, sir, how I did know him?

Q. I believe so.

Mr. McTernan:

We object to any testimony with reference to conversations or dealings with this person, Dolan.

The Court:

Yes, that would not be binding on this defendant.

Q. All right, where did you go to put in your application with Graham Dolan in Denver?

A. To the Communist Party Headquarters in Denver.

Q. Where was that?

A. That was located in the Quincy Building in Denver at that time.

Q. Who did you talk to there?

A. Arthur Barry, who was the Chairman of the Communist Party of Colorado.

The Court:
Do you want now to conclude the examination of Mr. Upton so he can be excused?

Mr. McTernan:
Excuse me, just a moment.

(Mr. McTernan confers with Mr. Witt).

Mr. Williams:
While they are conferring I am not sure whether I introduced or offered Government's Exhibit 19. If I haven't introduced it I want to do it now. Government's Exhibit 19 is a certified copy of the appointment of Arthur Flores as a notary public in Grant County, New Mexico, on the 19th day of March, 1948, for four years.

Mr. McTernan:
No objection.

(This exhibit, "G-19", which had previously been offered, is shown on Pages 82, 83, 84 and 85 of this record).

Mr. McTernan:
Your Honor, we will forego further examination of Mr. Upton.

Mr. Williams:
May Mr. Upton and Mr. Wilson, the two bankers, be excused. We don't want them any further.

The Court:
I gather both sides are through with them?

Mr. McTernan:
I think so.

The Court:

Both gentlemen are excused.

Mr. Williams:

Now, we have subpoenaed here Arthur Flores, the same Arthur Flores whose signature purports to be on these instruments. I don't want to use him. I am ready to excuse him. If the Court wants to call him, all right. If they want him as their witness, all right. Otherwise, he can be excused. I just wanted to advise them that he is here in attendance.

The Court:

The Court is not going to excuse him. It is up to counsel as to whether or not you want to use him.

Mr. Williams:

I am not going to use him.

Mr. Elfers:

Better let him stay.

The Court:

All right, call the next witness.

EDWARD JAMES CURRIE, a witness for the Government, having been duly sworn, in answers to questions propounded, testified as follows:

On Direct Examination:

Questions by Mr. Williams:

Q. What is your name, please?

A. My name is Edward James Currie.

The Court:
How do you spell that?

The Witness:
C-u-r-r-i-e.

Q. Where do you live, Mr. Currie?
A. Denver, Colorado.
Q. And what is your business?
A. I am a printer by trade, sir.
Q. And how long have you lived in Denver?
A. I have lived in Denver since my discharge from the Army in 1946, sir.
Q. You say you are a printer. With what paper are you connected there now?
A. I work for the Register System of newspapers.

The Court:
The what?

The Witness:
The Register System of newspapers.

Q. Were you ever a member of the Communist Party?
A. Yes, sir, I was.
Q. Where, first?
A. I originally joined the Communist Party in New York City.
Q. In what year?
A. In 1938 or 1939.
Q. And how long, then, did you stay in the Party or go to its meetings?
A. I was in the Communist Party, an active member in the Communist Party, until I was inducted into the Army in 1943.

Q. Do you know when that was?

A. That was in the early part of February, 1946.

Q. How long did you stay in and stay active in the Communist Party that time?

A. Until the latter part of May or June of that same year, 1946.

Q. What was your business then, Mr. Currie?

A. I was working on a newspaper; as a matter of fact, started the publication together with Mr. Dolan of a newspaper.

Q. What was the name of that?

A. The name of the newspaper was "Challenge".

Q. Was it a Communist newspaper?

Mr. McTernan:

I object to this on the ground it calls for an opinion and conclusion.

The Court:

Well, he can state the nature and kind of a paper it was without stating any conclusion. What was the nature of the paper?

The Witness:

The intent, the original intent and purpose of the paper—

Mr. McTernan:

That is what we are objecting to, Your Honor.

The Court:

Yes.

Mr. McTernan:

This is in no way connected with the defendant, has nothing to do with any issues in the case.

The Court:
The Court thinks that objection is good. Objection sustained.

Q. All right, did Arthur Barry, who you refer to—what did you say his office was?
A. Chairman of the Communist Party of Colorado.
Q. Did he at any time have anything to do with that paper?

Mr. McTernan:
Objection, Your Honor, on the ground it calls for his opinion and conclusion.

The Court:
Well, if he knows.

Mr. McTernan:
Further, on the ground that it is immaterial and irrelevant to any issue in this case.

The Court:
Well, that objection is overruled.

Q. What, if anything, did Arthur Barry have to do with the type of paper you were publishing?

Mr. McTernan:
That is a different question and we submit an objection to that.

The Court:
Yes, objection sustained to that.

Q. What, if anything, did he have to do with the operation of the paper?

Mr. McTernan:
Objection.

The Court:
That objection is overruled. He said he was the Head of the Communist Party in Colorado. You may answer that, as to what connection, if any, that you know about personally.

A. This Mr. Barry, after the original inception of the paper, a few weeks after its publication, became very active in determining the editorial policy of that paper?

Mr. McTernan:
Now, Your Honor, I move to strike that answer on the grounds that is an opinion and conclusion of the witness. Further, that this is remote, irrelevant and immaterial to any issues in this case.

The Court:
Yes, this wouldn't be binding on the defendant.

Mr. Williams:
This man was operating the paper, Your Honor.

The Court:
Well, he stated he was a Communist. That answers that part of it without going into editorial policy. Objection sustained.

Q. Do you know Clinton Jencks, the defendant in this case?
A. Yes, sir, I do.
Q. When and where did you meet him?
A. I first met Mr. Jencks in the early part of 1946 at an American Veterans Committee meeting.

Q. Where?

A. In Denver.

Q. And did you ever attend a closed Communist Party meeting with him?

Mr. McTernan:

Now, I object to this on the ground that it calls for an opinion and conclusion, Your Honor, and, furthermore, that it is remote from any issue in this case. Transactions that occurred in Denver, Colorado in 1946 have nothing to do with what happened in Silver City, New Mexico in April of 1950.

Mr. Williams:

You want to be heard on that, Your Honor? We intend to show, as we stated in our opening statement, we intend to connect him with the Communist Party in 1946, and bring him right on up to date as best we can. This affidavit was signed in '50. It is only four years before he signed this affidavit.

The Court:

(To reporter). Read the question.

The Reporter:

(Reads). "And did you ever attend a closed Communist Party meeting with him?"

Mr. McTernan:

Your Honor, I just want to make our position clear. I think this is a very serious problem and we would like an opportunity to present our legal authorities. Perhaps you would like us to do it in the absence of the jury.

Mr. Williams:

I would like for you to rule on it and go on with it. All the cases rule that you can go back a reasonable time.

The Court:

Well, the Court will excuse the jury so counsel for the defense can be heard.

(Whereupon the jury retired from the Courtroom).

Mr. McTernan:

Your Honor, we take this position in reference to this kind of testimony, namely, testimony that they offer to connect the defendant with the Communist Party at some period prior to April 28, 1950. Incidentally, Your Honor, we would appreciate it if the witness were excused too.

The Court:

All right, let the witness go out in the hallway.

(Whereupon the witness retired from the Courtroom).

Mr. McTernan:

Our grounds are these: First, that this evidence has no probative value, is irrelevant and remote, is inconsistent with the presumption of innocence, and is highly prejudicial. To receive such evidence would deprive the defendant of due process of law, on these grounds, it would render Section 1001 uncertain, vague, and indefinite, and would convict the defendant of a crime not charged, and it would rest the conviction on an artifical and unreasonable presumption. Finally, it is our position that to receive such evidence involves an interpretation and application of the statute which is not supported by the statute on its face by its legislative history or by the authoritative construction of the statute by the Supreme Court of the United States.

Your Honor, first with reference to the construction of the statute. You may remember that the Supreme Court said in the Douds case—this is in Chief Justice Vinson's

opinion—that the critical time was the day, or approximately the day, when the union officer signed the affidavit, and that there was absolutely no obstacle in the law to having a union officer who had been a member of the Communist Party leave the Communist Party and sign the affidavit without fear of reprisal. Now, this the Supreme Court had to do to save the statute under the First Amendment to the Constitution, Your Honor, and now to follow a different rule is simply to give the statute a meaning which the Supreme Court never intended it should have. As a matter of fact, under the circumstances of applying a different rule now, it seems to me as to convert a proceedings under Section 9(h) and Section 1001 into some kind of a trap whereby the statute having been authoritatively construed in one way the Government now intends to apply it in a different way.

Your Honor, the intent of the Congress in passing the statute was clearly to exclude past membership as any basis for liability in false swearing. The legislative history is, Your Honor, that at the time the legislation was originally introduced into the Congress, and particularly the bill introduced by Congressman Hartley, whose bill later became a companion bill to Senator Taft's, when that was first introduced it provided for present and past membership in the Communist Party. In other words, it required an oath for a swearing as to present or past membership in the Party, and this was deleted in the course of the passage of the statute so that the oath be directed only to present membership in the Communist Party.

When the statute was passed, it was submitted to the scrutiny of the Department of Justice, and there are repeated statements by Assistant Attorneys General, not only the present Assistant Attorney General in charge of this kind of prosecution, Warren Olney III, but his predecessor, Assistant Attorney General McIlhaney, to

the effect that the statute did not cover part membership in the Communist Party. We therefore submit that so far as the legislative history is concerned, without going into all of the details, the statute was meant to cover present membership in the Communist Party, and not past membership. The statute was so construed by the Supreme Court of the United States.

Now, it is significant to note that following the Douds decision and following the comments of the Assistant General on this question, there was introduced in the Congress—this was the 82nd Congress, First Session—a bill by Mr. Barton, H. R. 4680, which was designed to amend Section 9(h) so as to cover not only present membership in the Party but membership reaching back for one year prior to the time that the oath was signed. And, incidentally, the legislative history of the bill shows that it was drafted by the Department of Justice, so that apparently the Government finds it a good policy to talk out of both sides of its mouth on this issue. The Barton Bill was rejected by the Congress and was not passed, and the statute remains today as it was drafted and as it was interpreted by the Supreme Court.

Now, futrhermore, Your Honor, the legal problems presented by this kind of proof involve it seems to me two central problems, and that is, if there was evidence of past membership would that support any inference of membership at the time that the affidavit was signed?

The Court:

Well, that is the heart of the question.

Mr. McTernan:

I submit that is not all the heart of the question. This defendant stands here clothed with the presumption of innocence, and what the Government is attempting to do

is to drawn an inference from something he did four years before the crime charged in order to overcome the presumption of innocence, and what it does is to destroy the presumption of innocence. Furthermore, what it does is to draw an inference which has no reasonable foundation. The matter has been examined, Your Honor, not this issue has been examined but the legal problem has been examined in other cases, and I submit that the reasoning of these cases has particular bearing on the problem here.

The first of these cases to which I would like to call Your Honor's attention is a railroad case, a railroad company case, against Stolz, Indiana 341, 106 NE 646. This is a personal injury case in which the issue was whether the plaintiff's side curtains on his buggy were up or open at the time of the collision with the defendant's train, and the evidence was that they were open when the plaintiff left home about four miles from the scene of the accident, and it was requested, or urged that the inference be drawn that from the fact that they were open when the plaintiff was four miles away from the scene of the accident one should infer that they were open at the time of the accident; and the Court rejected that inference and said it was an improper one. I would read a short excerpt from the opinion: (reads.) "In order that proof by inference may be permissible there must appear some relation between the proven or basic facts of the inference and the fact to be proven, which relation must be to the effect that one being true the other also is true in some degree of certainty. Unless by recourse to inferences from the basic facts proven considered with the attending facts and circumstances a degree of certainty higher than the merely possible conjectured or speculative may be attained, such basic facts have no potency and the process by inference is not legitimate. In order that a certain hypothesis may be probable it must rise to a higher degree of certainty, and any other hypo-

thesis respecting the same subject matter, if less certain or only equally certain with such other, it is merely possible rather than probable. Therefore, in the question under consideration, unless by indulging in inferences respecting the condition of the buggy at the time of the collision probability may be obtained, the situation does not authorize proof by inferences."

Similarly, Your Honor, that rule has been applied by the Supreme Court of the United States. I refer you to "Maggio v. Zeitz", 333 US 56. Here a person had been found bankrupt, and it had been found that he had certain property, and this proceeding was one occurring a couple of years later to hold him in contempt for failure to comply with the order to turn over his property to the trustee. The only proof in support of the contempt citation was that he had the property at the time the petition was filed and it was sought to infer that two years later he had he property and, therefore, the ability to comply with the turnover order; and this the Court rejected, and again I would like to read from the opinion because I think it underlines the reasoning and sets out the reasoning that applies here. The Court said that, "Of course, the fact that a man at one time had a given item of property is a circumstance to be weighed in determining whether he may properly be found to have it at a later date. But the inference from yesterday's possession is one thing, that permissible from possession twenty months ago quite another. With what kind of property do we deal? Was it salable or consumable? The inference of continued possession might be warranted when applied to books of account which are not consumable or marketable, but quite inappropriate under the same circumstances if applied to perishable merchandise or salable goods in considerable demand. Such an inference is one thing when applied to a thrifty person who withdraws his savings account after being involved in an accident,

for no apparent purpose except to get it beyond the reach of a tort creditor . . . it is very different when applied to a stock of wares being slod by a fast-living adventurer using the proceeds to make up the difference between income and outgo."

Now, the Court, or rather, the concurring opinion of Mr. Justice Black went on to point out that not only was the inference which the Government sought to draw in that case unreasonable but that to draw the inference in a case where personal liberty or property was involved was to throw upon the defendant the burden of proving his innocence. And that is just what is involved here, what they want to do here is to draw this wholly outlandish inference of membership in the Communist Party in 1950 from membership in the Communist Party in 1950 from membership in the Communist Party four years before, and then cast upon the defendant the burden of proving that he wasn't a member in 1950, and this we submit simply subverts the presumption of innocence.

Furthermore, it is simply no basis at all for drawing the inference the Government would urge because in a situation like this the affiliation with the Communist Party involves a political judgment, it involves a valuation by somebody of a particular social and economical and political association, and determination upon a course of action. Now, it would require closing our eyes to the facts to refuse to recognize that the situation in this country between 1946 and 1950 underwent tremedous changes, and to assume that anybody was going to have the same political outlook in 1950 that he would have in 1946 it seems to me is to ignore reality. Moreover, in the interim involved right there was the passage of the Taft-Hartley Act and the requirement of signing these affidavits. Now, is it consistent with reason or con-

sistent with the presumption of innocence to assume that because a man was member in 1946, if he was, that he remained a member in 1950 in the teeth of a statute which would make it a crime to do what he was doing? It seems to me, Your Honor, that we are in a stiuation here by the Government's offer in which we are forced to stand reason on its head. The inference which the Government would seek to draw from this is just as unreasonable as the inference which the Court reejcted in such cases as "Todd vs. United States", where the statute, you will recall, provided that wherever a person who had been convicted of crime was the owner of a firearm it was to be presumed that the firearm had been obtained in interstate commerce and then the holder of it was punishable for trafficiking or receiving firearms in interstate commerce.

Now, Your Honor, for these reasons—Well, first let me say that in the Todd case the Court said that this was an inference which had no support. It could not be deduced that simply because somebody who had been convicted of a crime held a firearm, that that firearm was obtained in interstate commerce. You might just as well assume, said the Court, that because a man is walking down the street he is on his way towards the state line.

Now, I submit, Your Honor, that we have a similar situation here and that there is no basis upon which this kind of evidence can be relevant to the issues here.

The Court:

What does the Government say?

Mr. Williams:

We are not asking to draw any inferences, and we are not trying to base our prosecution on this one witness

We have to start somewhere. According to Mr. McTernan's argument we could only prove whether or not he attended a Communist Party meeting on May 1, 1950, the day he filed this affidavit. You got to start somewhere. And I remind you that the second count of this indictment says he was affiliated. To show he is affiliated we must show what he had done for three or four years prior to this date and three or four years after that date. That would show that he remained affiliated. If they attempt to show that he had resigned from the Party. I don't know if they are going to do that or not, but if they do then we must show that he is affiliated with the Party and to do that we want to show his association, his conduct, three or four years before this filing and after the filing, and show it is identical.

The Court:

You expect, then, to follow it with other testimony?

Mr. Williams:

Yes, as I announced in my opening statement, from 1946 right on up to the filing of this instrument.

The Court:

Objection overruled. Bring in the jury and the witness.

(Whereupon the jury and the witness returned to the Courtroom and resumed their proper places).

Direct Examination Continued:

Questions by Mr. Williams:

Q. Mr. Currie, the last question was, in effect, did you ever attend a Communist Party meeting with Clinton Jencks, the defendant in this case?

Mr. McTernan:

We object to this not only on the grounds that we stated for the record but on the further ground that this calls for the opinion and conclusion of the witness.

The Court:

Objection overruled.

Q. You may answer.

A. Yes, sir, I did.

Q. When and where was that meeting?

A. That was in April of 1946 at the home of Arthur Barry.

Q. Arthur Barry is the man you have identified as what position in the Communist Party?

A. The Chairman of the Communist Party of Colorado.

Q. Did you know the other people who attended that meeting?

A. Yes, sir, I did.

Q. About how many were there?

A. In all there were about eight or nine people present.

Q. Were they all known to you to be Communist Party members?

A. Yes, sir, they were.

Q. And this was at the home of Arthur Barry in Denver?

A. That is correct.

Q. Did Arthur Barry make any discussion there concerning the Communist Party in the presence of Mr. Jencks that night?

Mr. McTernan:

We object to any conversation with reference to the Communist Party. It has nothing to do with any issue in this case.

The Court:

Well, if it was in the presence or hearing of the defendant.

Mr. McTernan:

It is irrelevant. The question is not what somebody said about the Communist Party, or its purposes or object. It is whether somebody was a member of it. I am trying to indicate to you that Pandora's box is being opened by going back to this ancient and remote history.

Mr. Williams:

It will show the affiliation, Your Honor.

The Court:

Well, if the defendant was present there and in the hearing of Arthur Barry. They were all there when the defendant was present and hard and knew what was going on. The objection is overruled.

Mr. Williams:

Read the question.

(The reporter repeated the question).

A. Yes, he did.

Q. As near as you can, state what he discussed concerning the Communist Party. I know you can't remember that far back word for word, but give as best as you can what he said?

Mr. McTernan:
Same objection.

The Court:
Same ruling. Objection overruled.

A. Mr. Barry delivered a report that was almost verbatim to a report that appeared written by John Gates in "Political Affairs", a national political magazine of the Communist Party. The report dealt with veterans—

Mr. McTernan:
We object to this kind of description by the witness—

The Court:
Yes, just state what Barry said there in the presence of the defendant Jencks.

A. He delivered a report based on this report written by John Gates of the national committee of the Communist Party.
Q. As near as you can, state what Mr. Barry said?
A. The report that Mr. Barry gave dealt with—

Mr. McTernan:
Same objection.

The Court:
Just state what he said, the best you remember.

A. Mr. Barry in his report said that it was essential for Communist Party members who were veterans of World War II to get into veterans organizations in order to further the aims of the Communist Party.
Q. Did Mr. Clinton Jencks speak at that occasion?

A. Yes, sir, he did.

Q. As near as you can, relate what he said concerning Communist Party members and their work with the American Veterans Committee?

Mr. McTernan:

We object to this, Your Honor, on the grounds urged with reference to what Barry said, and on the further ground that it is leading and suggestive.

The Court:

Well, that objection is overruled. He is asking what this defendant said. Objection overruled.

Q. What Jencks said, I am asking you?

A. Mr. Jencks delivered a report at that meeting dealing principally with—

Mr. McTernan:

Just a moment.

The Court:

Just state what he said as best as you remember it.

A. As best as I can remember, Mr. Jencks dealt with—

Q. Not "dealt with", say what he said.

The Court:

What he said.

A. As best as I can remember, Mr. Jencks said that there were too many Communist Party members in the American Veterans Committee and that they should spread themselves into other veterans organizations.

Q. What else did he say, if you recall?

A. Mr. Jencks also said and spoke on veterans problems facing—

Mr. McTernan:

Just a moment. We object.

Q. When you say "spoke on" that makes it a conclusion. They want a snear as you can what he said?

A. Mr. Jencks said that there were problems facing veterans nationally through the country. Mr. Jencks said that these problems could only be brought to the fore, could only be met, by the proper activity of Communist Party members in various veterans organizations, raising these problems before the memberships of those organizations.

Q. Was that in line with the teaching of the Communist Party?

Mr. McTernan:

Objection.

The Court:

Well, if he knows.

Mr. McTernan:

Your Honor, he is not in a position to reach any conclusion. If you want to go into what the Communist Party's position in general was it seems to me we ought to know what the position was.

Q. I withdraw that question. Were you a member of the American Veterans Committee there also?

A. Yes, sir, I was.

Q. And was Mr. Jencks?

A. Mr. Jencks was at that time Chairman of the Denver Chapter of the American Veterans Committee.

Q. And was he at this meeting and to your knowledge a member of the Communist Party at that time?

A. Yes, sir, he was.

Q. Did he hold any office in the Communist Party?

A. Not to my knowledge, sir.

Q. Did he hold any office in the American Veterans Committee?

Mr. McTernan:

That has been answered, Your Honor. He just said two minutes ago he was chairman of it.

The Court:

You said he was chairman, didn't you?

The Witness:

Yes, sir.

Q. Did he hold any other office about that time in the American Veterans Committee?

A. Shortly after that period of time Mr. Jencks became the Regional Chairman of the Rocky Mountain region for the American Veterans Committee.

Q. Did you as a Communist in the American Veterans Committee try to influence it toward the Communistic teachings?

Mr. McTernan:

We object to this on the ground it calls for an opinion and conclusion.

The Court:

Well, perhaps it calls for an opinion. State what he did or said in that connection.

Mr. Williams:

May I ask him—I will ask him.

Q. Did you work toward that end for the Communist Party?

Mr. McTernan:

We object to this on the ground it calls for an opinion and conclusion, and it assumes facts not in evidence.

The Court:

Yes, the Court thinks it calls for a conclusion. It is a question of what he said and did toward that end, if he did anything.

Q. When you were at American Veterans Committee meetings did you identify yourself as a Communist?

Mr. McTernan:

Objection to this on the ground that it is hearsay as to this defendant, not binding upon him.

Mr. Williams:

He himself, did he himself identify himself.

Mr. McTernan:

What difference does it make if this man stood on his head on top of Pike's Peak? It has nothing to do with the issues in this case.

Mr. Williams:

It is not hearsay.

The Court:

It would be well to find out if the defendant was there. The question was as to what he did himself at some American Veterans Committee meeting which the Court don't know whether the defendant was present or not.

Q. Did you ever attend an American Veterans Committee meeting with Mr. Jencks?

A. Yes, sir.

Q. About how many times would you say?

A. I would say in all perhaps three or four, perhaps five.

Q. Did you ever in his presence identify yourself as a Communist Party member to other veterans there?

Mr. McTernan:

I object to this on the ground that it is irrelevant and immaterial.

The Court:

Objection overruled if Jencks was present.

A. I never had occasion to, sir.

Q. Did you ever hear Mr. Jencks identify himself as a Communist Party member at one of those meetings?

Mr. McTernan:

Same objection.

The Court:

Objection overruled.

A. No, sir.

Q. Did Mr. Jencks make any statement in that spee as to why they should get into other organizations oth than the American Veterans Committee?

Mr. McTernan:
I object to this on the grounds that it is leading a suggestive.

The Court:
Well, the Court thinks it is leading but it is a qu tion as to whether or not he said anything and, if what did he say?

Mr. McTernan:
Well, Your Honor, I also wanted to add that there no specific mention made as to time and place, wh speech he is talking about, who was present, or an thing else. There has been reference to several speec here.

Q. At the Communist meeting at Arthur Barn house, at which you said Jencks spoke and said members should get into other organizations other th the American Veterans Committee, did he make a statement as to why they should do that?

Mr. McTernan:
That has been asked and answered.

Mr. Williams:
It has never been answered.

Mr. McTernan:
Your Honor, the man has testified here as to a sta ment made by Jencks, or which he attributed to Jen

that there were too many Communists in the AVC and they should get out into other organizations.

The Court:
(To Mr. Williams): Now you are eliciting other information along that line?

Mr. Williams:
Yes.

The Court:
Objection overruled.

Q. Did he say why they should get into other organizations?
A. Yes.
Q. State why?
A. He said there were too many Communists in the American Veteran Committee, and the Am-Vets Committee in that particular chapter in Denver was becoming overloaded with Communists, and the necessity was to carry on Communist Party work in other and all veterans organizations, not just the one organization, AVC.

Mr. Williams:
You may have the witness.

Mr. McTernan:
Your Honor, we point again to the fact that we had no knowledge of the kind of evidence that would be produced here, or what part of the country he would come from, the vagueness of the charges, the lack of the bill of particulars, and the grab-bag nature of this case; and we therefore ask you to give us time to conduct an

investigation so that we may prepare ourselves to cross-examine this witness.

The Court:
That request is denied and overruled.

Mr. McTernan:
We ask that the cross-examination of this witness be deferred. We are not asking for a delay in the trial but just time to prepare our cross-examination of this witness.

The Court:
No. We will proceed now with the cross-examination. If it is important enough later that you may want to cross-examine him later on some issue the Court will have him called back.

Mr. Williams:
I have one other question, Your Honor, I would like to ask.

The Court:
All right.

Q. Will you name the other people who were at that Communist Party meeting at Arthur Barry's house, please?

A. I can't name them all. I will name as many as I can.

Q. Name all you can remember.

A. There was myself. There was Arthur Barry. There was Mr. Jencks. There was Graham Dolan. There was Ray Lavalle.

Mr. McTernan:
May we have the spelling of these names, Your Honor?

The Court:
Yes, spell them.

A. I believe Lavalle is spelled Capital L-a-v-a-l-l-e. Then there was a Harold Zeppelin. I believe the name is spelled the same as the dirigible. I can't recall the names of the others who were present offhand.

Q. Were they all members of the American Veterans Committee or do you know?

A. I would say that most of them were, sir.

Mr. Williams:
That is all.

The Court:
All right, gentlemen, you may proceed with cross-examination.

Mr. McTernan:
May the record show, Your Honor, that we proceed with our cross-examination without abandoning any request that we heretofore made and any objection in regard to Your Honor's requirements?

The Court:
That is understood.

On Cross-Examination:

Questions by Mr. McTernan:

Q. How long did you remain in the Communist Party after 1946, after February, 1946?

A. It was the beginning of June, 1946.

Q. And you have not been a member of the Communist Party at any time since then?

A. No, sir.

Q. Have you lived in Colorado all that time?

A. Yes, sir.

Q. At the time that you were a member of the Communist Party in 1946 were you conveying information to the F. B. I.?

A. No, sir, I was not.

Q. Did you make any notes of the meeting in Barry's house?

A. I didn't hear that.

Q. Following your atendance at the meeting at Barry's house that you have testified to here, did you make any note of what was said and done there?

A. No, sir.

Q. What was that?

A. I did not.

Q. Did you make any notes at the time of the meeting, during the meeting, I mean?

A. Not that I recall.

Q. Did you frequently meet with these people whose names you just gave us?

A. Fairly, often, sir.

Q. Dolan, for example, was he a veteran?

A. Yes, sir, he was.

Q. Ray Lavalle, was he a veteran?

A. To the best of my knowledge he was.

Q. And Harold Zeppelin was a veteran?

A. Yes, sir.

Q. And did you meet with these men frequently?

A. Not too frequently, no, sir.

Q. Well, how frequently?

A. Well, I would say that for the most part I met with them, with the exception of Mr. Dolan and Mr. Zeppelin, I would say the others I saw about the same number of times as I saw Mr. Jencks, four or five times.

Q. You saw all of these people in A. V. C. meetings in Denver, didn't you?

A. Most of them, sir.

Q. You understand me to mean the American Veterans Committee when I say "A. V. C."?

A. Yes, sir.

Q. For the purposes of shorthand I will use the initials instead of the full words?

A. Yes, sir.

Q. Had you ever met with Arthur Barry before this meeting at his house that you testified to?

A. Yes, sir, I had.

Q. And did you meet with him after that meeting in his house that you testified to?

A. Yes, sir, I have.

Q. In the year 1946 how many times would you say you met with Barry?

A. It would be hard to give a figure. I would say fifteen perhaps about twenty times.

Q. And these were rather routine meetings, were they?

A. Not all of them, sir?

Q. Well, did you make any notation of what was said and done at any of them?

A. At some of them, yes, sir.

Q. At the time, you did?

A. Yes, sir.

Q. Were these notes that you made for the purpose of assisting yourself in your Party activities?

A. Yes, sir, they were.

The Witness:

May I explain my answer to that question, Your Honor?

The Court:

Well, if counsel don't object.

Q. You can explain your answer if you want to.

A. At that time I was Business Manager of the newspaper, "Challenge", as I previously stated. Mr. Barry became very active in influencing and also directing the editorial policy of that paper. I worked very closely with Graham Dolan, who was the editor of the paper. Between the two of us we had a number of meetings with Mr. Barry concerning the paper. At those meetings it was necessary for me to take notes. What those notes are today I can't recall. I have explained my answer that way.

Q. Have you destroyed those notes?

A. Yes, I haven't kept them.

Q. You just made those notes for purposes of some work you might have been doing on "Challenge", is that right?

A. That is altogether right.

Q. For an article that you might carry or a feature you might run, or an editorial policy you might put into effect, is that right?

A. That is right, or some meeting that was taking place that I might possibly have to attend.

Q. In these fifteen or twenty meetings that you had with Barry in 1946 was there anything about them that caused them to stand out in your mind?

A. Caused Barry to stand out in my mind?

Q. Caused any of the meetings to stand out in your mind?

A. Yes, there was several of them, sir.

Q. And did you make any notes, or memoranda, or anything else whereby you could record your recollection of what was said or done at those meetings?

A. I have a fairly good mental recollection of those meetings.

Q. That isn't my questions. My question is, of those meetings that stand out in your memory did you at any time make any kind of notation or record of what was said or done at them?

A. It is possible that I did.

Q. Well, do you know?

A. I can't recall for a certainty. I want to answer the question honestly.

Q. I want to exclude, now, perhaps it would be simpler to exclude those meetings that you had with Barry dealing with the paper "Challenge", did you make any record or notation as to what was said or done at any of those meetings?

A. Not to my knowledge, no, sir.

Q. When is the first time that you ever told anybody about this meeting in Barry's house that you testified to here today?

A. In 1949.

Q. And where were you at that time?

A. In the office of the Federal Bureau of Investigation, Denver, Colorado.

Q. And did you go there voluntarily or were you called?

A. I went there voluntarily.

Q. And this was some three years or more after you left the Communist Party?

A. That is correct, sir.

Q. And at that time did you give the F. B. I. a report of what was said and done at those meetings?

A. Not at that time, sir.

Q. Did you at any time?

A. Yes, subsequently I did.

Q. And was this a written report?

A. Well, there were statements which I did sign.

Q. You mean that you talked to somebody there about what was said at these meetings and it was written down and later typed up and you signed it?

A. That is right, sir.

Q. And that includes a writing that you signed with reference to your recollection of what was said and done at this particular meeting, is that right?

A. Yes, sir.

Q. Was there more than one A. V. C. sub-division in Denver?

A. There may have been, sir. I was not active in the A. V. C.

Q. Were you active in any veterans organization?

A. Not at that time, no, sir.

Q. In 1946, from February to June, did you attend any A. V. C. meetings?

A. All together perhaps three or four.

Q. You know how many there were during that period?

A. There were probably more than that.

Q. Do you know?

A. No, sir, I don't.

Q. Do you know—withdraw that—When was this meeting in Barry's house?

A. I didn't hear you.

Q. When was the meeting in Barry's house?

A. That was in April of 1946.

Q. Where was the house located?

A. It was located in the east twenty's in Denver.

Q. Is that as close as you can fix it?

A. Yes, sir.

Q. How many times were you there?

A. Twice.

Q. Can you fix it any more precisely in the month of April?

A. No, sir, I am afraid I can't.

Q. Did you attend any meeting there after this April 1946 meeting?

A. No, sir, I didn't.

Q. You know anything about Clinton Jencks' connection with the Communist Party, if any, following June of 1946?

A. No, sir, I do not.

Q. Did you withdraw from the Communist Party?

A. Yes, sir, I left the Communist Party.

Q. Voluntarily?

A. Yes, sir.

Q. Did you advise anybody in the Party that you were withdrawing?

A. No, sir, I just dropped out. May I explain that?

Q. Perhaps I can get it out with a few questions. You stopped paying dues?

A. As a matter of fact, I never paid dues in that period of time.

Q. And you didn't pay any dues after that?

A. No, sir.

Q. And you stopped going to meetings?

A. Yes, sir.

Q. And you stopped taking any responsibilities in the organization?

A. That is correct, sir.

Q. Anything else you did to withdraw?

A. I just dropped out of sight.

Q. And as far as you are concerned your connection with the Communist Party definitely and unequivocally ceased in June of 1946?

A. That is correct, sir.

Q. And do you know of any effort on the part of any representative of the Communist Party to treat you as a member after June of 1946?

A. I will have to answer that question by saying no, sir.

Q. And—

Mr. McTernan:

Excuse me, just a moment, Your Honor. (Mr. Mcternan confers with Mr. Witt.)

Q. I don't know that I developed this clearly, Mr. Currie. What month was it in 1949 that you went to the F. B. I.?

A. It is difficult for me to recollect, sir. I would say that it was in perhaps April or May of 1949. It was the early part of the year.

Q. And when was it, following that, that you gave this statement or signed the statement that you told us about?

A. In subsequent weeks.

Q. Say before the end of June, 1949?

A. I would say so, yes, sir.

Q. And did you sign more than one statement?

A. Yes, sir, I did.

Q. How many statements did you sign?

A. Quite a number, sir.

Q. All in this period before the end of June, 1949?

A. To the best of my recollection, yes, sir.

Q. And did these statements that you signed in the period ending around the 30th of June, 1949 cover what you knew about the Communist Party and what

you had heard or seen in the Communist Party during the period of your prior membership in it?

A. That is correct, sir.

Q. Have you given any statements to the F. B. I. since the end of June, 1949?

A. Yes, sir, I have.

Q. When was that?

A. I gave a statement to the F. B. I. last year.

Q. 1953?

A. Yes, sir.

Q. When?

A. It was in the latter part of the year, probably September or October.

Q. Any other statements?

A. Not to my recollection, sir.

Q. Now, did you give a statement that dealt only with this question of the meeting at Barry's house to which you testified today, or was that included in some larger statement covering other subjects?

A. To the best of my recollection that was included in some other parts of the statement.

Q And was this thing that you signed that included the reference to the Barry meeting in the form of questions and answers or was it a narrative statement?

A. It was a narrative statement, sir.

Q. Did you ever carry on any correspondence with Arthur Barry?

A. To the best of my recollection; no, sir.

Q. When you were a member of the Communist Party in 1946 did you have a membership card?

A. Yes, sir, I did.

Q. And do you recall whether there were any signatures on that card?

The Witness:

May I explain my answer to that question, Your Honor?

Mr. McTernan:

You haven't answered it yet, Mr. Currie.

The Court:

Answer it first and then you can explain.

A. No, I don't recall any signatures on my membership card.

Q. Do you recall any signatures on any other documents issued to you by the Communist Party?

A. Yes, sir.

Q. What was that, what kind of document was it?

A. It was an application card for membership in the Communist Party that was countersigned, sponsored by Graham Dolan and signed by Arthur Barry.

Q. Did you see the signatures of Dolan and Barry on that document?

A. It was signed in front of me.

Q. Did you ever see the signature of Arthur Barry on any other occasion?

A. I may have, sir.

Q. Now, have you ever testified on behalf of the Department of Justice in any other proceedings?

A. No, sir, I have not.

Q. Is this the first time you have testified with reference to anything connected with the Communist Party?

A. No, sir, I testified at a Grand Jury session.

Q. Did you testify before the Grand Jury in this proceeding?

A. Yes, sir, I did.

Q. And that was when?

A. In April of last year.

Q. That was about the time you went back to the F. B. I. to give them some additional statements?

A. No, sir.

Q. What?

A. No, sir, I didn't give them any additional statements after that session.

Q. Perhaps you didn't understand my question. I understood you to say that you gave some statements to them?

A. In September or October of last year.

Q. September or October of 1953?

A. That is correct.

Q. And that was the first time since June of what year?

A. Since sometime in 1949.

Q. June of 1949?

A. That is right, sir.

Q. Now, these statements that you gave in September or October of '53—

A. It was just one statement, sir.

Q. One statement that you gave in 1953, and that was given where, up in Denver?

A. Yes, sir.

Q. Did that deal with Mr. Jencks?

A. No, sir. It did not.

Q. At all?

A. No, sir.

Q. Did you give any information to the F. B. I. concerning Mr. Jencks following June of 1949?

A. No, sir, I did not. I was instructed not to talk to anybody about the Grand Jury proceedings.

Q. I think you misunderstand me. Let me see if we understand each other. You went to the F. B. I. in 1949?

A. That is correct, sir.

Q. In April or May?

A. Sometime in that period, yes, sir.

Q. And you gave them a series of statements over the period ending around June 30, 1949?

A. That is correct, sir.

Q. Now, what I want to know is whether you gave the F. B. I. any information on Jencks at any time other than this period of time between April or May and the end of June in 1949?

A. Not to the best of my recollection, no, sir.

Q. You know how many statements you gave to the F. B. I. dealing with Jencks?

A. I believe one statement, sir.

Q. And was that a statement that was confined to things that you knew about Clinton Jencks?

A. Yes, sir.

Q. And did you obtain a copy of that statement after you had signed it?

A. Not to my recollection, no, sir.

Q. Have you ever seen that statement since you signed it?

A. No, sir.

Q. Did you look at that statement before taking the stand here?

A. No, sir, I did not.

Q. Did you consult with anybody in the Department of Justice before taking the stand here?

A. I consulted with the Department of Justice before appearing at the Grand Jury session last April.

Q. And before you appeared before the Grand Jury did you look at the statement that you had given the F. B. I. on Mr. Jencks?

A. Yes, sir, I did.

Q. And you read it over before testifying, is that right?

A. That is right.

Q. Did you read it over before testifying here?

A. No, sir, I did not.

Q. Did you consult with anybody in the Department of Justice immediately before testifying here?

A. No, sir.

Q. Or at any time between the Grand Jury testimony and your testimony today?

A. No, sir.

Q. Did you consult your Grand Jury testimony—withdraw that. Between the time that you testified before the Grand Jury and today did you read over or look at your Grand Jury testimony?

A. Yes, sir, I did.

Q. And when did you do that?

A. I believe it was Friday of last week.

Q. And where did you do that?

A. In the office of the United States Attorney.

Q. Here in El Paso?

A. That is correct, sir.

Q. Where do you live now, Mr. Currie?

A. I live in Denver, Colorado.

Q. And what is your address in Denver, Colorado?

A. 2620 Pontiac Street.

Q. And how long have you lived there?

A. Three and a half years.

Q. And you say you are a printer now?

A. Yes, sir, I am.

Q. And by whom are you employed?

A. I am employed by the Denver Catholic Register.

Q. The Denver Catholic Register?

A. Yes, sir. It is a register system of newspape
They don't print only one paper.

Q. And you do printing in connection with th
publication in Denver, is that right?

A. That is correct, sir.

Q. And how long have you been employed ther

A. Since February of 1949.

Q. Were you a printer in 1946?

A. Not working at the trade, yes, sir, I was.

Q. You were a printer but you did not work at t
trade?

A. That is right.

Q. Were you engaged full time on the "Cha
lenge"?

A. That is correct.

Q. For how long?

A. Until I left the "Challenge" and the Part
which was all at the same period of time.

Q. April and May of 1949?

A. Of 1946.

Q. Excuse me, 1946; and you undertook what e
ployment after that?

A. I am sorry, I didn't hear that.

Q. What employment did you have after you l
the "Challenge"?

A. After I left the "Challenge" I went to work
a print shop.

Q. What is the name of that print shop?

A. Capitol Hill Printing Company.

Q. Did you work there until you went to work w
the Catholic Register?

A. Yes, sir, I did. No, sir, excuse me. I work
there, I think, for a period of about a year and a h
and then started my own paper.

Q. What was the name of that?

A. "The Almanac."

Q. And how long did you publish your own newspaper?

A. About a year or so.

(At this point a recess was taken at 5:00 o'clock P. M., and upon reconvening at 9:30 o'clock A. M., January 13, 1954, proceedings were resumed as follows):

The Court:

All right, gentlemen, you may proceed.

(Mr. Currie resumed his seat on witness stand.)

The Court:

Any further questions of this witness?

Mr. Williams:

Your Honor, Mr. Mesnig of the F. B. I. would like to be excused. We are through with him.

The Court:

Is the defense willing to excuse him?

Mr. McTernan:

We concluded our examination.

The Court:

All right, he may be excused. Any further questions of this witness now on the stand?

Mr. McTernan:

Yes, Your Honor.

On Cross-Examination Resumed.

Questions by Mr. McTernan:

Q. Mr. Currie, have you ever heard of the Rocky Mountain Foundation for a Free Press?

A. Yes, sir, I have.

Q. What was that?

A. That was a group of people who were formed to make up the backers, you might say, the moral backers of the newspaper "Challenge".

Q. And they were a group fairly representative of the Communists there in Denver, Colorado?

A. I believe they were, sir.

Q. Was this group organized at the time you returned to Denver from the Army?

A. I can't recall exactly whether it was completely organized at that time or not.

Q. And you were employed by the Rocky Mountain Foundation for a Free Press, were you not?

A. That is correct, sir.

Q. And your wages were paid by them?

A. That was the name of the foundation, yes, sir.

Q. And you conferred with the foundation from time to time concerning the nature of your duties on the "Challenge"?

A. That is correct, sir.

Q. And you took orders and instructions from the foundation concerning the performance of your duties on the "Challenge"?

A. I would have to say yes to that answer, sir—or question, excuse me.

Q. Now, did a man named "Dolan" work with you on the "Challenge"?

A. Yes, sir, he did.

Q. And you were asked to leave the "Challenge", were you not?

A. No, sir, I was not.

Q. Isn't it a fact that you had difficulty with the Rocky Mountain Foundation for a Free Press while you were employed on the "Challenge"?

A. Not to my knowledge, no, sir.

Q. Isn't it true that the foundation advised you that you were so upset and hysterical that they found it impossible to work with you?

A. Not to my knowledge, no, sir.

Q. You don't recall any incident in which you were told that it was no longer possible for you to work with the foundation because of your nervous temperament?

A. Not that I recall, no, sir.

Q. Do you recall being told that you were under such tension that it was impossible to work with you?

A. Under what?

Q. Under such tension that it was impossible to work with you?

A. No, sir, I don't recall being told that.

Q. You recall being told that by Dolan?

A. No, sir, I don't.

Q. You don't recall having had any difficulty with Dolan or anybody else in the Rocky Mountain Foundation for a Free Press?

A. Not to my recollection, no, sir.

Q. Or anyone employed in connection with the "Challenge"?

A. No, sir, not to my recollection.

Q. Is it your recollection that you left the "Challenge" freely and voluntarily?

A. That is correct, sir.

Q. Only because you wanted to, is that right?

A. That is correct, sir.

Q. Now, when did you go into the Army?
A. I went into the Army in 1943, sir.
Q. And did you enlist or were you drafted?
A. I was drafted.
Q. In what branch of the Service did you go in?
A. In the Infantry.
Q. Did you go overseas?
A. Yes, sir.
Q. To what Theater?
A. The Mediterranean Theater.
Q. And how long were you overseas?
A. Not quite a year.
Q. And were you brought back to the United States before your discharge?
A. I didn't get the question.
Q. Did you return to the United States before you were discharged from the Army?
A. Yes, sir.
Q. And when did you return to the United States?
A. I believe we came back from Italy in August of 1945, around that period of time.
Q. And you were discharged toward the end of 1945?
A. In January of 1946.
Q. And what was the nature of your discharge?
A. Honorable Discharge.
Q. Honorable Discharge?
A. Yes, sir.
Q. Was any special conditions or qualifications attached to it?
A. No, sir.
Q. Did you have what is sometimes referred to in the Army as a "P-N" discharge?
A. A what?
Q. "P-N", you know what that is?
A. I don't know what that is.

Q. Have you in the course of time since 1946 ever received psychiatric treatment?

A. No, sir, I have not.

Q. None at all?

A. No, sir.

Q. And you say you left the Communist Party in 1946?

A. That is correct, sir.

Q. Isn't it a fact that you were asked to leave the Communist Party in 1946?

A. No, that is not a fact.

Q. What did you say?

A. No, sir.

Q. No?

A. I said, "No, sir, it is not a fact."

Q. Isn't it a fact that you were told by certain leaders of the Communist Party that you were too upset to work with and they asked you to leave?

A. By Mr. Who?

Mr. McTernan:

May the question be read, Your Honor?

The Court:

Read the question, Mr. Reporter. (The reporter complied)

A. Not to my recollection, no, sir.

Q. When you answer "not to my recollection" is there something that might assist you in refreshing your recollection as to your condition at that time and your difficulties, if any?

A. May I ask to have that question repeated?

The Court:

Mr. Reporter, read the question.

(The reporter complied)

A. Not that I know of. I am afraid I may be using the term "recollection" too much, perhaps developing into a habit. I'm sorry.

Q. I am not criticizing you for your use of the term. I just wanted to know what it means. In any of your reports that you wrote up for the F. B. I., that you dictated to the F. B. I., did you relate your condition at the time in 1946 that you left the Communist Party?

A. I don't understand what you mean by "condition".

Q. Well, I will withdraw the question. While you were working on the "Challenge" you had a number of conversations with Mr. Dolan, didn't you, about your difficulties?

A. While I was working on "Challenge" I had numerous conversations with Mr. Dolan. Whether they were about my difficulties or not I can't recall that.

Q. Well to assist you in your recollection, didn't you have a number of conversations with Mr. Dolan concerning marital difficulties while you were working with "Challenge"?

A. No, sir, I don't believe I did.

Q. During the period that you worked on "Challenge" did you visit the Dolan home at all?

A. Yes, sir, I did.

Q. You were acquainted with both Mr. Dolan and his wife, weren't you?

A. That is correct.

Q. Is her first name Eunice?

A. That is correct, sir.

Q. And your wife also went with you, didn't she, to visit at their home?

A. On occasion, yes, sir.

Q. Now, isn't it a fact that in the course of these visits or other contacts you had with Mr. and Mrs. Dolan you discussed your marital difficulties with them?

Mr. Williams:

Just a minute. I believe I will object to this for the sake of time and also because a man's private life and confidential relationships, especially with his wife, is not a proper subject of impeachment, or qualification or disqualification of a witness. It is immaterial and irrelevant.

The Court:

Yes, the Court at the moment don't see the materiality of his marital difficulties, if any.

Mr. McTernan:

Well, Your Honor, those go, as I am trying to develop, into his mental condition at the time which bear upon his ability to observe and to remember the things he purports to remember.

The Court:

The Court thinks he has given you a good deal of latitude along that line, and will give you more, but to inquire into his marital difficulties —

Mr. McTernan:

I am not inquiring into the facts of these difficulties, if any. I am just trying to establish that they existed.

Mr. Williams:

I object to the question for the reasons stated.

The Court:

The Court will permit you to ask him if he had any marital difficulties but don't go into any details.

Mr. McTernan:

I won't go into the details.

The Court:

All right, just ask him if he had marital difficulties.

Mr. McTernan:

I think there is a pending question. May it be read?

The Court:

Mr. Reporter, read the last question.

The Reporter (reads):

"Q. Now, isn't it a fact that in the course of these visits or other contacts you had with Mr. and Mrs. Dolan you discussed your marital difficulties with them?"

The Court:

The Court will let you answer that, whether or not you discussed it. We won't go into detail about this.

A. I don't recall any difficulties in that period.

Q. Do you recall telling Mrs. Dolan while you were working on "Challenge' 'that your marital difficulties had you so upset that you felt unable to perform your work?

A. I don't recall that.

Q. Do you recall that in the course of your work on "Challenge" there were a number of incidents involving very sharp tension and hostility between you and Mr. Dolan?

A. No, sir, I do not.

Q. Do you recall apologizing to Mr. Dolan for having flared up at him because you were so disturbed over your marital difficulties?

A. To Mrs. Dolan? Did you say to Mrs. Dolan?

Q. I said to Mr. Dolan in my question; or to Mrs. Dolan?

A. Yes, there was an incident in which I apologized to Mrs. Dolan.

Q. And for the reason I indicated in my question, isn't that right?

A. No, sir.

Q. Isn't it a fact that during the period in the first half of 1946, while you were working on "Challenge" you had a number of incidents of flareups between you and other persons connected with "Challenge"?

A. No, sir.

Q. Isn't it a fact that during this period in '46, these incidents of flareup—withdraw that. Isn't it a fact that during the first half of '46 you had incidents of flare-up with Mr. Jencks?

A. Not to my knowledge, no, sir.

Q. Isn't it a fact that at the time you left the Communist Party, as you say, you felt hostile toward Mr. Jencks?

A. No, sir, that is not a fact.

The Witness:

Your Honor, may I explain my answer to that question?

The Court:

Yes.

A. I would like to make it perfectly clear that I bear no hostility toward Mr. Jencks, and that I never have. In my previous testimony I think I pointed out that I have only met Mr. Jencks perhaps only four or five times at the most.

Q. Well, as a matter of fact, you don't even know whether you were meeting with Jencks on a group interested in "Challenge" or whether you met with him in a Communist Party group, do you?

A. Yes, sir, I do.

Q. Isn't it a fact that there were many people connected with "Challenge" that were not members of the Communist Party?

A. That is very true.

Q. And isn't it a fact that the newspaper "Challenge" was interested in veterans problems as well as many other problems?

A. That is true, sir.

Q. And articles appeared in "Challenge" dealing with the veterans question?

A. That is correct, sir.

Q. Now, in this meeting that you say you participated in with Jencks, Jencks stated what he considered to be the important problems facing the veterans in 1946, didn't he?

A. That is correct, sir.

Q. One of them he said was housing, wasn't it?

A. I believe so, yes, sir.

Q. And another one was an opportunity to make up for lost time, so to speak, by getting training for employment and other service, isn't that right?

A. I believe that is true.

Q. And another thing, another veterans problem he referred to, was the problem against discrimination against Negro and Mexican-American veterans, isn't that right?

A. That is correct, sir.

Q. And he said that he wanted these people in these groups to raise these problems generally in the community and help the people find the solution for them, isn't that right?

A. That is correct, sir.

Q. And he wanted articles to appear in "Challenge", he said he wanted articles to appear in "Challenge" on these questions, didn't he?

A. I can't recall exactly.

Q. Well, what is your best recollection on it?

A. My best recollection would be that that would be correct too, sir.

Q. And he said that the veterans groups should work as closely as they could with these other committees, such as the Rocky Mountain Foundation for a Free Press, didn't he?

A. That is quite possible.

Q. And that they should work also with service organizations in and around Colorado?

A. That is correct, sir.

Q. Now, do you recall, do you think now, as you look back into 1946, that this was a Communist meeting because they would discuss such veterans problems as discrimination and housing and employment?

A. It was a Communist Party meeting.

Q. Will you answer my question?

A. Yes, sir.

Mr. McTernan:

No further questions.

On Re-Direct Examination.

Questions by Mr. Williams:

Q. What did you mean by your last answer "yes, sir"?

Mr. McTernan:

I submit, Your Honor, that the answer needs no explanation. It stands by itself. I submit that counsel's question is leading and suggestive.

Mr. Williams:

Is it suggestive for me to ask him what he meant by an answer?

The Court:

No, objection overruled.

Mr. Williams:

Will the reporter read the next to last question by counsel?

(The reporter complied.)

A. I would have to change the answer to my question. I didn't understand that.

Q. You meant to say "no" as an answer to his question?

Mr. McTernan:

Now, is that leading and suggestive?

The Court:

Yes.

Mr. McTernan:

I ask that examination by counsel be terminated because the witness can't obviously give any answer other than what counsel has put in his mouth.

A. I would have to re-answer that question and "no, sir."

Q. Mr. Currie, did you withdraw from the Communist Party or did they ask you to withdraw?

The Witness:

Your Honor, may I explain my answer to that?

The Court:

You can answer it first and then explain.

A. I withdrew from the Communist Party.

Q. Did any member of the Communist Party come and talk with you after you gave notice you were going to withdraw?

A. Yes, sir.

Q. Who was that, please?

A. Mr. Graham Dolan.

Q. As best you can, state what he said to you about your withdrawing and what you said to him?

Mr. McTernan:

We object. It—

The Court:

Wait a minute, was this in the absence of the defendant Jencks?

Mr. Williams:

Your Honor, it is cross-examination. They asked him why he withdrew, and if he didn't get kicked out, and all of that.

The Court:
Let the Court first hear the defendant's objection.

Mr. McTernan:
We object to it on the ground it is hearsay.

The Court:
Objection sustained. It is hearsay.

Mr. Williams:
They asked him if this Dolan didn't ask him to withdraw—

The Court:
The Court sustains the objection as hearsay.

Q. Did Graham Dolan or any other member of that Party ask you to stay in the Party?

Mr. McTernan:
Same objection.

Mr. Williams:
They asked him if that man had asked him to withdraw. I ask him what his answer was to it.

The Court:
Well, he can state the fact without stating any conversation.

Q. All right, state the fact, then, about your conversation with Dolan?

The Court:
Not the conversation but whether or not anybody asked him to stay in yes, or no.

A. Yes, sir.
Q. Who?
A. Mr. Graham Dolan.

Mr. Williams:
That is all.

The Court:
Any recross?

Mr. McTernan:
No further questions, Your Honor.

(Witness excused.)

* * * * * * * *

Mr. Williams:
This witness, Mr. Currie, tells me he called home and his son is very ill. He is very anxious to be excused. We are through with him if they are.

Mr. McTernan:
Your Honor, could he be subject to subpoena and recall? I don't know that we have any further use for him but in view of the problems we discussed with you yesterday—

The Court:
It is probably best that he wait a while.

Mr. McTernan:
I wouldn't want to ask you to hold him here.

The Court:

All right. (To witness) You will be excused but you will be available promptly.

The Witness:

Yes, sir.

* * * * * * * *

J. W. FORD, a witness for the Government, having been duly sworn, in answer to questions propounded testified as follows:

On Direct Examination.

Questions by Mr. Alderman:

Q. Please state your name, address, and occupation?

A. J. W. Ford. I am a clergyman. I live in Los Angeles.

Q. Where did you live in the summer of 1948?

A. In Albuquerque, New Mexico.

Q. Were you a member of the Communist Party at that time?

A. I was.

Q. Were you in contact with the Federal Bureau of Investigation at that time?

A. I was.

Q. Did you continue your membership in the Communist Party after that time?

A. I did.

Q. And did you from time to time report to the Federal Bureau of Investigation as to information in your possession concerning the Communist Party?

A. Yes.

Q. Did you hold an office in the Communist Party in the summer of 1948?

A. I did.

Q. What was that office?

A. I was a member of the Executive Board of the Albuquerque City branch.

Q. Do you know the defendant, Clinton Jencks?

A. I do.

Q. Is that him at the end of this table? (Indicating)

A. Yes.

Q. When was the first time that you remember seeing Clinton Jencks?

A. The first time I remember seeing Clinton Jencks was in July of 1948 in Albuquerque, New Mexico.

Q. On what occasion?

A. That was the state founding convention of the new party of the state of New Mexico.

Q. Did you participate in that convention?

Mr. McTernan:

Your Honor, we enter the same objection to evidence dealing in 1948 that we did to evidence dealing in 1946.

The Court:

Same ruling, objection overruled.

Q. Did you participate in that convention?

A. I did.

Q. Why were you at the convention?

Mr. McTernan:

I object—

The Court:

Overruled.

Mr. McTernan:

May I state the grounds for my objection, Your Honor?

The Court:

Pardon me, I thought you had finished.

Mr. McTernan:

I object on the ground that this can't help but involve transactions not connected with this defendant and therefore hearsay.

The Court:

The Court don't know until he asks.

Mr. McTernan:

Then I object to the question on the ground that it calls for an opinion and conclusion without foundation.

Mr. Alderman:

Your Honor, he knows why he was at the convention.

The Court:

Yes, objection overruled.

A. I was at the convention as a delegate to that founding convention and, of course, at the behest of the Communist Party.

Mr. McTernan:

Now, Your Honor.

The Court:

That part of his answer is stricken.

Mr. McTernan:

It is because of this kind of results that I ask you to require of these prosecutors that they lay a foundation for all of this, because we are getting in incompetent and prejudicial material.

Mr. Alderman:

He was at the convention and Jencks—

The Court:

The Court has ruled and instructs the jury to disregard the last part of the answer because it was unresponsive.

Q. In what capacity was Mr. Jencks at this convention?

Mr. McTernan:

I object to this on the ground that it calls for an opinion and conclusion.

The Court:

The Court thinks so unless he knows of his own knowledge. He can state what he said and did, not his conclusion as to why he was there.

Q. Do you know in what capacity Clinton Jencks was there?

Mr. McTernan:

Object to this on the ground the witness cannot lay the foundation for his own testimony.

The Court:

Objection sustained.

Q. What did Mr. Jencks do at this convention?

A. He gave the keynote address for the convention.

Q. Did you participate in the campaign of the new party in New Mexico in 1948?

A. I did.

Q. What was the New Party?

A. The New Party was the New Mexico name for the Progressive Party.

Mr. McTernan:

We will move to strike that, Your Honor, on the ground that it is sheer conjecture and no foundation laid.

Mr. Alderman:

Your Honor, if he knows he has a right to answer the question. He was at the convention.

The Court:

Yes, if he knows the Court will permit him to answer. Objection overruled.

Q. Did the Communist Party participate actively in the campaign of the New Party in 1948?

Mr. McTernan:

We object to this on the ground it calls for an opinion and conclusion.

Mr. Alderman:

Your Honor, he was an officer of the Communist Party—

The Court:

Just state what he did, not what others did.

Mr. McTernan:

We object to anything he did, Your Honor, outside the presence of this defendant on the ground it is hearsay.

Mr. Alderman:

Your Honor, counsel says we must lay a foundation for our question. In order to do so we must establish these facts.

The Court:

If he knows what the Communist Party did, as an officer and member of the Communist Party, the Court will permit him to answer. Objection overruled.

Mr. Alderman:

(To reporter) Repeat the question.

(The reporter complied.)

The Court:

You can answer that question if you know of your own knowledge.

A. Yes, sir.
Q. Did Mr. Jencks participate in that campaign?
A. Yes.
Q. What did he do?

Mr. McTernan:

Your Honor, I object to these gunshot questions. Can't we have a foundation laid?

The Court:

Just state what he said and did. If the defendant Jencks said or did anything in connection with that cam-

paign that this witness has personal knowledge of the Court will permit it.

Mr. McTernan:

Will Your Honor require that a foundation be laid as to time and place, and persons present, to this kind of testimony?

Mr. Alderman:

It is the summer of 1948, the campaign of 1948 of the Progressive Party.

Mr. McTernan:

This is counsel's testimony but it isn't the testimony of the witness.

Mr. Alderman:

I wouldn't have stated it unless the witness had so testified, Your Honor.

Mr. McTernan:

Now, Your Honor—

The Court:

All right, let's move along. First fix the time.

Q. You have already testified that the founding convention was around July of 1948, is that correct?

A. Yes.

Q. Now, between July of 1948 and the elections in November of 1948 what, if you know, did Clinton Jencks do in the campaign of the New Party?

Mr. McTernan:

We object on the ground that there is no foundation laid as to time and place. This is a four or five month period in the entire state of New Mexico.

The Court:

The campaign, he says, was on from July until the election.

Mr. McTernan:

That is correct, Your Honor, but there must be some specific time and some specific place when he saw Jencks do something. We can't have gunshot testimony over a four-month period over a whole state. In any normal case a witness is required to lay specific foundation to time and place before he testifies to things said or done.

Mr. Alderman:

Your Honor, I will add to the question, "reciting times and places."

The Court:

All right, first give times and places when the defendant Jencks had any participation in the campaign between July and November of 1948.

A. I remember in August of 1948 seeing Clinton Jencks in Albuquerque. He was a candidate for Congress on the New Party ticket.

Q. Where did you see him in August in Albuquerque?

A. At the home of Joseph DeSanti.

Q. Where is the home of Joseph DeSanti?

A. 309 Carolina Avenue.

Q. Who is Joseph DeSanti?

A. Joseph DeSanti is the head of the Communist Party of the state of New Mexico.

Q. At that time what position, if any, did Joseph DeSanti hold in the Communist Party?

A. He was the Chairman of the Albuquerque City Branch of the Communist Party.

Q. Was a Communist Party meeting held at the home of Joseph DeSanti?

Mr. McTernan:
We object on the ground it is leading and suggestive.

The Court:
Objection sustained.

Q. What was the nature of the meeting at the home of Joseph DeSanti?

Mr. McTernan:
I object to this on the ground it calls for an opinion and conclusion. The nature of a meeting depends on what was done and who was there and not upon the conclusion of the witness.

The Court:
If the defendant Jencks was present at that meeting he will be permitted to say what was said and done.

Mr. Alderman:
Your Honor, I submit that if a man knows the nature of a meeting he goes to he can state what kind of a meeting it was.

The Court:
He can state what was said and done at that meeting if the defendant Jencks was present.

Q. Who was present at that meeting?
A. Joseph and Frances DeSanti, Clinton Jencks, Alfredo Montoya, and myself.

Q. Who presided at the meeting?

A. Joseph DeSanti.

Q. Were all persons present at that meeting to your knowledge members of the Communist Party?

A. Yes.

Q. What did Clinton Jencks say at that meeting, if you remember and if you know?

A. I recall Clinton Jencks telling of his plans to further his candicay for Congress and laying down a few suggestions for those of us who were present to follow in order to help the campaign, not only of his own candidacy but of the entire ticket.

Q. Did he say anything else that you remember?

A. I recall his saying that he would do all within his power to further the cause of the New Party, that he would concentrate mainly on getting out the vote.

Q. When was the next time that you remember seeing Clinton Jencks after August, 1948?

A. The next time I remember seeing Clinton Jencks after August, 1948 was about in February of '49.

Q. Where did you see him?

A. In Santa Fe, New Mexico.

Q. Whereabouts in Santa Fe?

A. At a hotel there.

Q. Was that a meeting at which you saw Mr. Jencks?

A. Yes, it was.

Q. Who called the meeting?

A. Joseph DeSanti.

Q. The same man at whose home you had met with Jencks in August?

A. Yes.

Q. Who presided at that meeting?

A. Joseph DeSanti.

Q. For what purpose was the meeting called?

A. The purpose of the meeting was to—

Mr. McTernan:

We object to this on the ground it calls for his opinion and conclusion.

The Court:

Objection sustained. Just state what was said and done at the meeting.

Q. Who was present at the meeting?

A. Joseph and Frances DeSanti, Clinton Jencks, Alfredo Montoya, and myself. There were others present but I don't recall their names.

Q. Did Joseph DeSanti say anything at this meeting?

A. Yes, he did.

Q. Will you tell us what he said?

A. Joseph DeSanti said that there was a forthcoming meeting of a Mexican-American Association in Phoenix, which was to be held in Phoenix, and he was desirous of having good representation from our area, from the New Mexico area, at that meeting, and he wanted a number of delegates to be chosen from that group to be present at the meeting in Phoenix.

Q. Did he say anything else about this group?

A. Not that I recall.

Q. Were delegates chosen?

A. Yes.

Q. Who were chosen as delegates?

A. Clinton Jencks and Virginia Jencks, Isabelle Gonzales, Alfredo Montoya, and Joseph and Frances DeSanti.

Q. Were all those persons known to you as members of the Communist Party?

A. They were.

Q. Had anything happened shortly before this meeting?

A. Yes.

Q. State what happened?

Mr. McTernan:

We will object, Your Honor, to this on the ground it is irrelevant and immaterial.

The Court:

Well, in the presence and hearing the defendant Jencks, confine it to that.

Q. May I change that question. Did anything happen shortly before this meeting in connection with the formation of this group?

A. Yes.

Mr. McTernan:

We object to this on the ground it is irrelevant and immaterial.

The Court:

Unless Jecks was present.

Mr. Alderman:

We have established that Jencks was a delegate to the founding of this organization. We would like to establish the facts with reference—

The Court:

The Court sustains the objection to anything that happened in the absence of Jencks.

Q. What was the structure of the Communist Party in the State of New Mexico at this time, if you know?

Mr. McTernan:

I object on the ground it is irrelevant and immaterial.

The Court:

If he knows. Objection is overruled. As a member of the Party, if he knows, the Court will permit him to answer.

A. The structure of the Party was very loose. There was no actual central connection between the various sections.

Mr. McTernan:

Your Honor, I submit that this is all just a description of a generalized nature. The question doesn't call for his comments and conclusions and observations.

The Court:

Yes, as to the loose organization, the Court thinks that the objection is good. If he is able to state the aims and purposes of the Communist Party at that time, and the principles of the Communist Party, from his knowledge as a member of the Party, the Court will permit him to answer that; not a loose description as counsel has just said.

Mr. Alderman:

What was your ruling, Your Honor?

The Court:

If he can state of his own knowledge, since he says he is a member of the Communist Party, or was at that time, what the principles and aims of the Party were, that branch of the Communist Party to which he belonged; if he knows what that was the Court will permit him to answer.

Q. Do you know the structure of the Communist Party in the State of New Mexico at this time as an officer and member, of your own knowledge?

A. Yes, sir.

Q. Please tell us what the structure of the Party was at that time?

A. There were two main groups, one in the northern section of the state, represented by the branch in Albuquerque; and one other group in the southern part of the state, represented by the Grant County area.

Q. Who was in charge of the northern area?

A. Joseph DeSanti.

Q. Who was in charge of the southern area?

A. Clinton Jencks.

Q. When was the next time you remember seeing Clinton Jencks?

A. The next time I recall seeing Clinton Jencks was about in April of '49.

Q. Where was that?

A. In Hot Springs, New Mexico.

Q. Is that known as Truth or Consequences, New Mexico today?

A. Yes.

Q. Who called that meeting?

Mr. McTernan:

I object to this, Your Honor.

Mr. Alderman:

Your Honor, he was at the meeting.

The Court:

Let's get down to that, if Jencks was at the meeting.

Q. Was Jencks at this meeting?
A. Yes, he was.
Q. Who presided at the meeting?
A. Joseph DeSanti.
Q. Who else was present?
A. Alfredo Montoya, and Virginia Jencks, and myself.
Q. For what purpose was the meeting called?

Mr. McTernan:
Objection.

The Court:
State what was said and done.

Q. What was done at that meeting in Hot Springs in April of 1949?
A. The complete organization of the state—

Mr. McTernan:
Your Honor, this isn't a statement of what was said and done.

The Court:
Yes, state what was said and done as well as you remember.

Mr. Alderman:
This is a statement, I believe, about what action was taken at that meeting.

The Court:
State what action was taken if Jencks was present. The Court will permit him to answer. Go ahead and answer it.

A. The completion of the organization for the Communist Party of the State of New Mexico.

Mr. McTernan:

Your Honor, again it is not a description of what was said and done. This is his conclusion. Sort of a capsule description, a thumbnail sketch.

Mr. Alderman:

I believe this was the action that was taken by the Party in response to the question.

The Court:

Just state what was done and more particularly what part of the defendant took in the proceedings.

A. The Communist Party of the State of New Mexico was divided into various areas of interest. Each one of us present at the meeting accepted responsibility for carrying out a certain area of responsibility. Clinton Jencks was assigned to carry out the responsibility of labor, of the Party's interest in labor, in the state. I was asked to carry out the Party's interest in civil rights. Virginia Jencks was asked to carry out the Party's responsibility for the New Party, and Alfredo Montoya was asked to carry out the responsibility for Mexican-American work in the state.

Q. Was Joseph DeSanti at that meeting?

A. Yes, he was.

Q. Was any action taken with reference to DeSanti?

A. Joseph DeSanti was selected at that meeting as the organizer of the State of New Mexico of the Communist Party.

Q. What did Clinton Jencks say at that meeting, if you know?

A. I recall that Clinton Jencks said he was directly behind the state organization to do all within his power to support it personally, and would concentrate mainly on recruiting among the labor forces of his area and of other areas, and that he would particularly see that a financial, a greater financial support would be given to the Communist Party.

Q. Was any destination given to the group which met on the date?

A. Yes.

Q. Tell us what it was?

A. It was the State Board of the Comunist Party.

Q. How were the functions of the State Board of the Communist Party carried out at that time?

Mr. McTernan:

We object to this, Your Honor, on the ground—

The Court:

Well, if he knows, he can state what was done pursuant to or as a result of this meeting.

Mr. McTernan:

But this is just a general description, Your Honor, not necessarily involving the defendant, not binding on him. We are not here conducting an un-American Activities Committee investigation into the Communist Party, but trying a person charged with a crime. These things don't have anything to do with the charge here.

Mr. Alderman:

Your Honor, the witness just testified that Jencks was a member of the State Board and I asked how the State Board carried out its functions.

The Court:

If he knows what Jencks did, if anything, pursuant to the meeting.

Mr. McTernan:

Can't we have this tied down to persons, places, and times?

The Court:

This was a meeting at Hot Springs in 1949, so he testified. Let the reporter read back the question.

The Reporter (reads):

"Q. How were the functions of the State Board of the Communist Party carried out at that time?"

The Court:

Objection sustained to that question.

Q. Did the State Board meet at regular intervals?

A. No.

Q. How often were meetings held?

A. There was actually no time planned for the calling of meetings. Because of the distance between members of the State Board no particular time could be placed, but Joseph DeSanti carried out most of the responsibility in his travels through the state.

Q. When was the next time after the meeting in April, 1949, that you remember seeing Clinton Jencks?

A. I recall seeing Clinton Jencks in about May, shortly after that meeting in 1949?

Q. Where was this meeting held?

A. The meeting was held in Albuquerque at the home of Joseph DeSanti.

Q. Would you give us the address of that home?

A. 309 Caroline Avenue.

Q. Who presided at the meeting?

A. Joseph DeSanti.

Q. Who was present at the meeting?

A. Clinton Jencks, Alfredo Montoya, Joseph and Frances DeSanti, and myself. There were others, I don't recall their names.

Q. What was done and said at that meeting?

A. Each person who was on the State Executive Board was asked to give a report on his work, whereupon I gave a report on civil rights, Clinton Jencks gave his report on his labor section, stating that his work had gone along quite well, he was recruiting nicely among labor forces in the State, and gave a history of the Communist Party in previous years, saying that the Party had made one great mistake and that was concentrating more on numbers rather than on the quality of members. He was seeking to rectify that error and was going to concentrate more on the quality of his recruits rather than the number; that he felt that in previous years those who were members of the Communist Party among the labor forces were not indoctrinated too well in the Marxist-Lenin point of view and he was going to see that that was done. He felt that it was not good for him to take full responsibility for the work and that he would shift some of that responsibility for the work to someone else and he would do all he could to financially aid the Party and would report at regular intervals to the Chairman of the Board on monies collected, and also that the union newspaper would be open to support issues concerning the Communist Party and its interest.

Q. Did he say who was going to share the responsibility for the Communist Party in his area?

A. Yes, he did.

Q. Who did he say?

A. Arthur Flores.

Q. When was the next time after this meeting in May, 1949 that you remember seeing Clinton Jencks?

A. The next time I recall seeing Jencks was in I believe August of 1949.

Q. Where was that?

A. That was on a ranch near Santa Fe, New Mexico.

Q. Who presided at that meeting?

A. Joseph—

Mr. McTernan:

Just a moment, this assumes facts not in evidence. First, that there was a meeting, and next that there was anybody presiding.

The Court:

Objection sustained. Let him state the place where the meeting was and the date of it.

Mr. McTernan:

There is no testimony about a meeting. He says he saw Jencks at a ranch.

The Court:

Well, all right.

Q. On what occasion did you see Jencks at this ranch?

A. At a meeting of leaders of the Communist Party called by Joseph DeSanti in preparation for a forthcoming meeting of a Mexican-American Association meeting in Albuquerque shortly thereafter.

Q. Who was present at this meeting?

A. Clinton Jencks, Joseph and Frances DeSanti, Alfredo Montoya, and myself. There were others also at this meeting but I don't recall their names.

Q. What was said and done at that meeting, if you remember?

A. I recall the Chairman of the meeting calling upon the leaders of the Communist Party to do all within their power to support the meeting which was coming up in Albuquerque and to take specific responsibilities for the carrying out of that meeting. We were cautioned not to take the front in the meeting which was forthcoming. We were to rather take the background and not be too conspicuous in our activity and in our work.

Q. Did you attend this coming meeting with reference to the Mexican-American organization you refer to?

A. Yes, I attended the latter part of the meeting.

Q. Did Jencks also attend that meeting?

A. Yes.

Q. Where was this held?

A. The meeting was held in Albuquerque, New Mexico. I believe it was on North 4th Street.

Q. And what took place at this meeting or convention?

Mr. McTernan:

I take it this is limited to events that happened in the presence of the defendant.

The Court:

Yes, the Court confines it strictly to that.

Mr. Alderman:

I'm sorry. I thought we had established that the defendant was there.

The Court:

All right, you have left the ranch and gone to Albuquerque, but you don't have the date. What was the date of this meeting in Albuquerque?

The Witness:
Around the middle of August of 1949.

The Court:
Did you testify what ranch this is in Santa Fe? What was the ranch?

The Witness:
The name of it?

The Court:
Yes.

The Witness:
I believe it was "The Nest of the Owl."

The Court:
All right.

Q. What was done and said at the meeting in the middle of August that you attended?

A. When I arrived at the meeting there was a heated discussion going on. A resolution had been introduced by someone in attendance calling on the organization to publicly disavow Communist support and condemning any organization which advocated the violent overthrow of the Government, and which, if passed, would have severed completely all connection—

Mr. McTernan:
Just a moment.

The Court:
Yes, just state what was said and done at that meeting if Jencks was present.

A. The resolution caused quite a discussion and it was defeated. After its defeat a number of original sponsors of the organization walked out, resigned, and condemned it.

Q. Who led the fight to defeat this resolution, if you know?

Mr. McTernan:

I object to this kind of conclusion drawing, Your Honor, can't we have what was said and done?

The Court:

All right. Ask him what, if anything, the defendant Jencks said and did at that meeting.

Q. Do you remember anything that the defendant Jencks said or did at that meeting?

A: I don't recall.

Q. Did Jencks participate in this fight over the resolution on Communist issues?

Mr. McTernan:

I object to this as leading and suggestive.

The Court:

Well, he has testified, I believe, that he was there, and he said he don't recall that Jencks participated in the discussion, but he did say, as the Court understood him, that Jencks was present.

Mr. McTernan:

Yes, sir.

Q. Did anyone else participate in the fight on this Communist issue in Jencks presence?

A. Yes.

Q. Who was that?

A. Virginia Jencks.

Q. What was the nature of her participation?

Mr. McTernan:

Object to this, Your Honor. It calls for a conclusion.

The Court:

Well, if Jencks was present there and participated at the meeting or he was one of them, the Court will overrule the objection.

A. Virginia Jencks led the fight on the floor.

Mr. McTernan:

I move to strike that.

The Court:

Yes, just state in substance what she did at that meeting.

Mr. Alderman:

I submit that he could state who led the fight if he was present there and knew about it.

The Court:

Objection sustained. He can state what she said and did there, as best as he remembers it, in the presence of this defendant.

A. I don't recall in specific words what she said in her efforts to defeat the resolution.

Q. Who was Virginia Jencks?

A. She is known to me as the wife of Clinton Jencks.

Q. Would you tell us, as best you remember, what she said and did in that connection in the presence of Clinton Jencks?

A. As I remember, she stated that the resolution was not necessary, that no organization was seeking to control or dominate the organization being so formed. She further felt that the organization formed was more concerned with fighting discrimination, prejudice, and for the support of freedom on the part of Mexican-Americans in the Southwest, and that anything else which might come up would deter the organization from its main course.

Q. You testified about a meeting at a ranch in August preceding this meeting or convention of the Mexican organization. Were all the members present at the meeting at the ranch personally known to you to be members of the Communist Party?

A. Yes.

Q. Did you attend any other Communist Party meetings with Clinton Jencks after that meeting at the ranch?

Mr. McTernan:

We object to this as leading.

The Court:

He has already testified that he attended the meeting in Albuquerque August 15th, which was after he had the meeting at the ranch.

Mr. Alderman:

That wasn't a Communist Party meeting, Your Honor.

The Court:

All right, ask the question directly.

Mr. Alderman:

I want to know if he attended any other Communist Party meetings, Judge, at which Jencks was present, after the one in August at the ranch.

Mr. McTernan:

It is the leading and suggestive quality of this question about a Communist Party meeting that calls for an opinion and conclusion and puts words into the witness' mouth. I think it is for the jury to decide what kind of a meeting it was.

Mr. Alderman:

This witness knows whether it was a Communist Party meeting or not.

The Court:

Just ask him whether he attended a meeting with Jencks and other persons at some time and ask him who was present and what the meeting was about.

Q. Did you attend any other formal meetings with Jencks after that time?

A. I don't recall any specific meeting.

Q. When did you leave Albuquerque?

A. Some time in September of 1950.

Q. Did you continue your membership in the Communist Party up to that time?

A. I did.

Q. During that period, 1949 up to September of 1950, was there any destination of a special nature given to the Silver City area by the Communist Party?

Mr. McTernan:

We object to this, Your Honor, as calling for his opinion and conclusion, and calling for transactions outside the presence of the defendant Jencks.

Mr. Alderman:

We are only asking whether this witness knows of his own knowledge with regard to the area in which Mr.

Jencks presided, and he was designated by this witness as the leader of the Party in that area.

Mr. McTernan:

But this can't be attributed to the defendant Jencks. It has no bearing in this case.

Mr. Alderman:

We submit, Your Honor, that it is relevant to this case in determining the issues.

Mr. McTernan:

If we are going to try this defendant Jencks for everything that is going on in the Communist Party we are here for the winter, this case can go on for months. We will get so far beyond the issues that we will never see the issues of this case again.

The Court:

The objection is sustained at this time.

Q. Did you hold any other office in the Communist Party of the State of New Mexico in 1949 other than as a member of the State Board?

A. Yes.

Q. What ofice is that, or what was that?

A. I was one of the security officers for the state.

Q. What were your duties and responsibilities as a security officer?

Mr. McTernan:

We object to this on the ground it is immaterial to any issue in this case and not binding upon or connected with the defendant Jencks.

Mr. Alderman:

We will connect it. Counsel insists we lay the proper foundation for our questions.

The Court:

With your assurance that you will connect it with this defendant the Court will overrule the objection, otherwise it is sustained.

Q. Will you answer the question?

A. My responsibilities as security officer for the Communist Party was to observe all members who were or with whom I associated to notice any particular defections from the Communist philosophy or any peculiar actions, statements or associations, which would endanger the security of the Communist Party of the state.

Q. If you found such to be the case what action would be taken by the Communist Party, if you know?

A. I would simply report what I found. If it was counted as important the person would be called in and would be either severely reprimanded or criticized, or disciplined. If he refused to accept such discipline he would either be suspended or expelled.

Q. During the time you were security officer and member of the State Board of the Communist Party in 1949 up to September, 1950, did you know of or hear of any disciplinary action of any sort against the defendant Clinton Jencks?

Mr. McTernan:

Well, Your Honor, if this is the connection I move to strike everything that this witness has said. I move to strike all his testimony concerning security officer.

Mr. Alderman:

Your Honor, it is important that we know how the Party operates, the mode of operation of the Party, to know whether or not the defendant is connected with it.

The Court:

You can ask him what he heard.

Mr. Alderman:

I will amend the question and ask him whether he knows of his own knowledge whether or not—

The Court:

If it involves any conversation with the defendant Jencks, anything that Jencks said or did in his presence, the Court will admit it. Otherwise, it is hearsay and the objection is sustained. We will try this case according to the rules of evidence.

Mr. McTernan:

Have you ruled on my motion to strike? I—

Mr. Alderman:

May I ask another question?

Mr. McTernan:

May I continue my remarks?

Mr. Alderman:

Pardon me.

Mr. McTernan:

I move to strike the testimony with reference to his office as security officer.

Mr. Alderman:
May I ask another question?

The Court:
The Court will permit you to ask another question about anything that was said or done in the presence of Jencks. Otherwise, it will grant the motion to strike.

Mr. Alderman:
We have established that the defendant was a member of the Communist Party and—

The Court:
The Court has ruled. If you have another question about any conversation with the defendant Jencks along that line the Court will admit it. Otherwise, it is immaterial and irrelevant. Otherwise, it is purely hearsay and it also carries with it a conclusion, and the Court will sustain the objection.

Q. Do you, of your own knowledge, know of any specific action taken by the Communist Party during the period you were security officer and member of the State Board against Clinton Jencks?

Mr. McTernan:
Same objection.

The Court:
Objection sustained.

Mr. McTernan:
I renew my motion to strike.

Mr. Alderman:

Your Honor, I submit that this witness was in a position to know. As a member of the State Board and as a security officer his responsibility was to check on—

The Court:

How would that be binding on the defendant?

Mr. Alderman:

The defendant was a member of the Party. It certainly is pertinent to know how the Party operates to know how this defendant was affiliated with this organization. It is very significant to know how the Party operates and whether the Party took any action in connection with this defendant during this period. This is a crucial period of time, right around the affidavit. Here is a man who was in the Party, was a security officer and a member of the State Board, and he knew the facts with regard to this defendant and with regard to the mode of operation of the Party.

The Court:

We will proceed along the lines of well-established legal evidence.

Mr. Alderman:

Your Honor, there are cases that state that it is necessary in order to determine whether or not a person is a member of or affiliated with a Party that he know the mode of operation of that Party.

The Court:

He has testified to that but then, now, you are asking for hearsay and a conclusion.

Mr. Alderman:

It would not be hearsay. It is a question of whether or not certain action was taken by the Party. It is not a question of any conversation, and it is not a conclusion. It is a fact. Either the Party did or did not take action.

The Court:

Something somebody else did in the absence of this defendant is not binding on him.

Mr. Alderman:

This defendant is subject to the discipline of the Party, and it is necessary to know—

The Court:

Motion is granted and the jury is instructed to disregard this witness' statement.

Mr. Williams:

I don't believe you caught it, Judge. This action he is inquiring about was taken against Clinton Jencks, the defendant. Now, doesn't that indicate whether or not it will throw light on whether or not he was affiliated with that Party, which is one of the charges in the indictment?

The Court:

You haven't brought any notice or light to him.

Mr. Williams:

The action is against him, Your Honor.

The Court:

Motion is granted at this time. The jury will disregard his statements about his activities as a security officer because the defendant was not present and the Court rules it is hearsay evidence and calls for a conclusion.

Q. Was any disciplinary action taken by the Communist Party against the defendant, Clinton Jencks, during this whole period of time in the presence of the defendant?

Mr. McTernan:

I object to this on the ground it calls for his opinion and conclusion. This question about disciplinary action taken, if it is to be testified to here, Your Honor, I submit it had to be statements of what was said and done at a particular time and place, and persons present, not some conclusion.

The Court:

The Court will overrule the objection if the disciplinary action was taken in the presence of the defendant.

Q. Answer "yes" or "no"?

A. No.

(At this point a fifteen-minute recess was taken until 10:55 A. M., at which time proceedings were resumed as follows):

On Direct Examination Resumed.

Questions by Mr. Alderman:

Q. Did you receive any Communist Party training while you were in New Mexico?

Mr. McTernan:

I object to this on the ground it is irrelevant and immaterial and not connected with this defendant.

Mr. Alderman:

Your Honor, we are trying to lay a foundation to show that this witness has knowledge of facts about the manner of operation of the Communist Party in the State of New Mexico at this time, as to how they operated, what their policies were. We feel it is extremely important to this case in order to determine whether or not—

The Court:

The Court has already ruled. If he personally, as a member of the Communist Party, knows its aims and objectives at that time, the Court will permit him to answer, of his own personal knowledge.

Mr. Alderman:

We submit that this question, Your Honor, is a foundation to show he is qualified to answer that question.

Mr. McTernan:

May we be heard, Your Honor?

The Court:

Certainly.

Mr. McTernan:

It makes no difference what the aims of the Communist Party are, unless they are individually accepted and fostered by the defendant Jencks, they are not binding upon him. The Communist Party is not on trial here. Clinton Jencks is on trial. And what Clinton Jencks himself believed, what his purposes are, what his objectives are, if any, such thing is in issue, and not the general purposes of the Party. Why, Your Honor, even in a Smith Act prosecution it is necessary to show that

these so-called aims and objectives were personally indorsed by the individual defendant. We are not even concerned here with a charge that is involved in a Smith Act case. The only question is one of membership and affiliation, and what somebody else told somebody else in some Communist meeting or what somebody else in a school told some other people absent the defendant has nothing to do with the defendant here.

The Court:

What the Court is ruling on is that this witness has testified that Jencks was a member of the Communist Party and attended these Communist meetings, at which this witness and Jencks were both present; so the Court thinks it is material to show, if he can, from personal knowledge of this witness, what the Communist Party was standing for, what its business was, what its aims and objectives were as disclosed, if they were, by the presence there of Jencks, and what he and Jencks and the others present had in mind and contemplated doing as members of the Communist Party.

Mr. McTernan:

Your Honor, it wouldn't make any difference, from the standpoint of the issues in this case, what the aims of the Communist Party are. The question, insofar as the affidavit is concerned, is whether he is a member or whether he is affiliated with it. It has nothing to do with the aims of the Communist Party.

The Court:

The Court thinks it is important to show what the Communist Party as such was to which he belonged.

Mr. McTernan:

That is not called for in the affidavit. It is not alleged. We didn't come here prepared to defend the aims and objectives of the Communist Party. This sort of testimony takes us completely by surprise and it is utterly beyond the issues of this case.

Mr. Alderman:

Your Honor, counsel has just stated that it was pertinent to this case what Jencks believes, and since we can't put our whole case on at once it is also pertinent to know what the Communist Party believed and taught, and what their policies were, and then to show whether Jencks was affiliated with the Party or was a member of the Party to show whether he followed the pattern or conduct, according to the system of that Party, to follow the aims and objectives of the Party.

Mr. McTernan:

You can't impute to the defendant Jencks the aims and objectives of the Communist Party. There is a long line of cases on that. They start as far back as "Herndon v. Lowry" and "Snyder v. United States". This sort of testimony is not binding on the defendant Jencks and to receive it here is highly prejudicial and may be cause for a mistrial if it should involve testimony going to some other offense because testimony on such other offenses is in no wise necessary to the testimony or connected with the testimony to establish the offense charged in this indictment.

Mr. Alderman:

We are not trying to impute these objectives or policies to this defendant. Certainly this jury does not know what the policies of the Communist Party of the State

of New Mexico were in 1949 and 1950. We are going to show what the policies and the ideas of the Communist Party in the State of New Mexico were and then show what Clinton Jencks ideas were at the same time.

The Court:

By something he said or did?

Mr. Alderman:

By something he said and did, and then leave it to the jury to decide. We want to show what the Communist Party in New Mexico did so that the jury can decide for themselves. I am sure these jurors are not experts on Communism.

Mr. McTernan:

It makes no difference what the Communist Party in New Mexico, New York, Massachusetts, or Colorado did. It is what the defendant did that is involved in these proceedings, and if they stood for rainmaking over the desert of Texas it wouldn't make any difference for purposes of this case, because the question is, did he falsely say he wasn't a member, and this is their second witness who purports to give specific testimony on the question of membership and participation in the Communist Party. Is it necessary to explain that testimony by a lot of mish-mash about what the Party stood for? I submit it is not and the only purpose here is to confuse and to prejudice.

Mr. Alderman:

Your Honor, counsel admits that what the defendant said and what he believed and what he taught was pertinent in this case. How can the jury connect that

with the Communist Party or know whether or not it had anything to do with the Communist Party if they don't know what the Communist Party taught and preached at that time. Certainly in order to show that Jencks was affiliated in April, 1950, it was important to know what he had to say and what he was doing at that time, and it is important to know what the Communist Party was saying and doing so the jury can decide whether or not there was a relation between the two and whether or not the defendant was affiliated with it.

The Court:
As the Court understands it, you gave your assurance that you will, after you elicit this testimony you now seek, connect all of this with the defendant Jencks?

Mr. Alderman:
In the manner I have outlined.

Mr. McTernan:
Not by participation, only by parallelism. Let me recall to you an incident involving the late Senator Taft who was accused—

Mr. Alderman:
Your Honor—

Mr. McTernan:
May I continue my statement, Your Honor?

Mr. Alderman:
Pardon me.

Mr. McTernan:
He was accused of being a Communist by a real estate lobby because something he said about public housing

coincided with what they thought the Communist Party's position was. Is a man going to be condemned because what he said or did happened to coincide with what the Communist Party said or did? I submit that this is the worst kind of reasoning. It is the kind of reasoning that put people behind barbed wire over in Nazi Germany. This constitutes proof by imputation and it is denounced and has been denounced by the Supreme Court ever since the issue has been before it, and consistently so, and the recent statute forbids it. I refer you to Section 4 of the McCarran Act of 1950.

Mr. Alderman:

Your Honor, in the recent case against Harry Bridges, testimony similar to this in nature was presented, I believe, and they went into statements of Bridges and allowed the jury to determine whether or not they were consistent with Communist activities at the time. Now, how can the jury decide if they don't know what the Communist Party stood for?

Mr. McTernan:

What they did in the Bridges case was to interrogate Bridges as to what he said and did; but this witness is not the defendant. He is being interrogated about what somebody said to him outside the presence of the defendant Jencks, and meetings or business, I don't know what, with which the defendant Jencks has no connection and for which he has no responsibility. It is this kind of proof that has been without exception denounced and rejected by the Supreme Court in cases I have cited you.

Mr. Alderman:

What the Communist Party stands for is very pertinent to this case. The jury is not an expert in Communism. If this case related to a cattle deal or an auto-

mobile accident we could bring in an expert to show the technical details about automobiles, or about cattle, or whatever it should happen to be. Certainly these jurors know more about cattle and automobiles than they do about Communism, but nevertheless it would be proper in those cases to bring in an expert; and we submit it is proper in this case to allow a man who knows of his own knowledge what the Communist Party did and stood for in that community at that time to state that, and then we can connect that with Mr. Jencks by showing what he knows and stood for.

The Court:

All right, with that assurance the objection is overruled.

Mr. McTernan:

Will you hear me on just one more thing?

The Court:

Yes.

Mr. McTernan:

If the issue here were that a certain person belonged or didn't belong to the cattlemen's association it wouldn't be necessary to present testimony on the anatomy of a steer. Now, this is what this counsel wants to do here. He is not offering you evidence or the jury evidence on whether or not Jencks was a member of the Communist Party, or affiliated with the Communist Party. He offers you testimony on the anatomy of the Communist Party, and the anatomy of the Communist Party has nothing to do with this case.

The Court:

Objection overruled.

Q. Did you receive any training from the Communist Party while you were with it in the state of New Mexico?

A. Some.

Q. Tell us what it was?

Mr. McTernan:

Objection.

The Court:

Objection overruled.

A. I attended a school in the winter of 1949 which was conducted by Arthur Barry. The purpose of the school was to—

Mr. McTernan:

I object to that.

The Court:

Yes, just state what you did and what the aims and purposes of the Communist Party were as you learned them at this school.

Q. Go ahead.

A. A course in Marxism was taught at that school. At almost every Communist Party meeting a portion of the time was devoted to educating the members of the Communist Party in its doctrine, and that is the extent of my training.

Q. As a member of the State Board of the Communist Party in 1949 and up to September 1950, and also as a security officer, did you participate in the formulation and execution of the policy of the Communist Party in the State of New Mexico?

A. Yes.

Q. Now, based on your training in the Communist Party, and based on your knowledge and experience as security officer and as a member of the State Board, will you tell us what the policy of the Communist Party of the state of New Mexico was during 1949 and up to September, 1950, with regard to the governments of the United States and of Soviet Russia?

Mr. McTernan:

Now, Your Honor, this is not what he was taught. That was not what was said and done. Not only is it unrelated to the defendant but it is his general conclusions and observations about something we know not what.

The Court:

Yes, it is not a matter of policy. If he knows what the Communist Party was in New Mexico at that time, when he belonged to it and participated in its activities; if he knows what the Communist Party was at the time, not its policies, the Court will permit him to answer.

Mr. Alderman:

I would like to ask him what the Communist Party taught at that time with reference to this particular question. Not conclusions, but what he knows as a matter of fact; based on the foundation we have laid, his party training, his membership on the State Board, and his capacity as a security officer; what did the Communist Party teach?

Mr. McTernan:

Your Honor, this is a request for expert testimony. He is not being asked what was said or done by anybody in the Communist Party on any particular occasion. He

is being asked to testify here as an expert, and counsel, if you asked him, would frankly admit he was trying to have this man testify as an expert witness. There is no call for expert testimony here. How can we possibly cross-examine him, Your Honor? If we have something tied down to time and place and persons present, then we can get at him, but otherwise there is no way we can get at this by way of defense.

Mr. Alderman:

We are asking what the Party taught during this particular period of time which we have identified.

The Court:

From his knowledge as a member of the Party and having attended one of their schools. If he knows of his own knowledge what it taught and what its principles were.

Can we have this tied down to a specific time and place, and persons present, and what was said?

Mr. Alderman:

It is tied down. They don't change its policy.

Mr. McTernan:

Is Mr. Alderman a Communist? Is he testifying as an expert witness?

Mr. Alderman:

We can find out from the witness.

The Court:

All right, let him name times and places. With this understanding the objection is overruled.

Q. During the period of time from 1949 up to September, 1950, when you helped, as you have testified, formulate the policy and helped execute the policy of the Communist Party in the state of New Mexico, will you tell us what the Communist Party taught with reference to the governments of the United States and Soviet Russia?

Mr. McTernan:
That is the same question. Why can't he be called upon to testify as to a particular occasion, by whom and who was present?

The Court:
If he can fix it as to date the Court will ask him to do so.

Q. Will you answer the question?

The Court:
Giving the time and place, if you can, when these principles were discussed.

A. I cannot give any exact time. I can give the location.

The Court:
All right, give location and approximate time.

A. The approximate time was around March of 1949 on a ranch near Santa Fe, the same ranch I previously mentioned. The course was taught by Arthur Barry on Marxism. It developed in that particular school that the Communist Party felt that the—

Mr. McTernan:
Your Honor, again—

The Court:
Yes, objection sustained as to what was felt. Just state what was said and done.

A. Well, it was taught that the Communist Party—

Mr. McTernan:
May we have who taught and what?

The Court:
Yes.

A. Well, Arthur Barry taught that the Communist Party's position in regard to the United States was that it was controlled and governed mainly by big business, by Wall Street financiers, that it did not afford ample and adequate opportunity for the average man to operate as a citizen in an atmosphere of freedom, and that the Government of Soviet Russia represented what government could be when governed by the people, when it was in control of the people.

Q. You testified that you took part in the formulation and execution of the policy of the state of New Mexico during the period under discussion. Were these teachings of Arthur Barry at this school, which you have just testified about, taught throughout the Communist Party in the state of New Mexico during this period?

Mr. McTernan:
Now, I object. This witness can't possibly testify to that.

The Court:
Yes, he has covered the field pretty good as to what he understood about the Communist Party.

Mr. McTernan:
I thought we agreed this witness can testify as to what somebody said at a particular time and place but that he can't draw these conclusions general in their nature and unrelated to anybody?

The Court:
Objection to this question is sustained.

Q. You know of your own knowledge that those teachings that you have just testified about were put into practice in the state of New Mexico during 1949 and up to September, 1950?

Mr. McTernan:
We object to this, Your Honor. There is no foundation.

The Court:
The Court will permit him to answer insofar as he knows.

A. Insofar as I know, yes.
Q. Will you tell us, insofar as you know, based on the experience and the offices you held in the Party, what was it the Communist Party taught in the state of New Mexico, to your knowledge, with regard to the Korean War?

Mr. McTernan:
Objection.

The Court:

Yes, objection sustained unless he tells who said it and when and where.

Mr. Alderman:

Your Honor, I think he is in a position to know, as a man who helped formulate the policies of the Party.

The Court:

If he does he is able to say where this discussion took place and who participated in it. We don't try anybody on conjecture and speculation. We will pin it down.

Q. Did you hear any discussion of the Communist Party, or any teachings of the Communist Party, in relation to the Korean War after the war started in 1950?

A. I heard many such discussions. I can't fix any particular date or time.

Q. Were these discussions always the same?

Mr. McTernan:

I object.

The Court:

Yes, that is leading. Objection sustained. The jury will disregard that.

Q. Well, what were these statements and discussions in this regard?

The Court:

Well, by whom and where? Pin it down to that, if you can.

Q. Where, to the best of your recollection, were these discussions held?

A. In the home of Joseph DeSanti.

Q. Was it more than one?

A. Many of them.

Q. What was said in these discussions, if you know?

Mr. McTernan:

May we have the time and the persons present, and who said what?

The Court:

Yes, approximate time and place, and who was present and who did the talking.

A. In regard to this particular discussion I cannot fix any definite time or exact statements given by specific people.

Q. Can you give us the approximate time?

A. I think so. I recall that upon one occasion around May of 1949 a discussion was held in the home of Joseph DeSanti.

Q. Was this in regard to the Korean War?

A. Yes.

Q. Do you recall any other discussions in that regard?

A. No, I don't.

Q. What was the teaching of the Party or what was the discussion?

The Court:

Well, now, the Court will confine that to who said it and when and where, not just speculation.

Q. Did Joseph DeSanti ever make any statement about the Korean War in your presence?

Mr. McTernan:

I am confused. Is this the same meeting we are talking about, Your Honor?

The Court:

The Court so understood.

Q. I would like to ask another question. Did Joseph DeSanti make any statements in your presence at his home with regard to the Korean War after it started in June, 1950?

Mr. McTernan:

Now, I object to this on the ground it is leading and suggestive. The witness just caught himself in a hole and he's trying to get him out of it.

The Court:

It is not necessary to comment that. Counsel just make the objections and the Court will rule. Objection sustained.

Mr. Alderman:

I only asked him what happened after the war started.

The Court:

Fix it as to dates and persons and don't lead him.

Q. Did you attend any meetings where statements were made with regard to the Korean War?

A. As I stated before, yes. It is difficult for me to fix any particular date time or the exact place, or specific statements by individuals. There were many many meetings during the period I lived in the state of New Mexico, and I can't remember the exact statements or places to make here.

Q. Can you give us the approximate time of any meetings you attended in which the Korean War was discussed?

A. I recall that a meeting was held in Bayard, New Mexico. I believe that was around August of 1950, and quite a discussion was held at that time.

Q. What was stated at that meeting with reference to the Korean War?

Mr. McTernan:

May we have it tied down as to whom?

The Court:

(To witness). You mean in Bayard, New Mexico, in August, 1950?

Mr. McTernan:

May we have it tied down as to who said it?

Mr. Alderman:

I will withdraw the question and go to another point.

Q. Did you carry a Communist Party card from 1949 up to September, 1950?

A. No.

Q. Based on your knowledge of security officer and as a member of the State Board, do you know of your own knowledge whether or not members of the Communist Party during this period carried Party cards?

Mr. McTernan:

Just a moment. We object to this on the ground it goes far beyond the issues in this case.

The Court:
Well, if he knows, the Court will permit him to answer.

A. Party members during this period usually did not carry a card.

Mr. McTernan:
Excuse me. That is not responsive, and I move to strike it. That is an opinion of his, and a conclusion. It is not a statement of what was done by whom.

The Court:
The Court said if he knew, and I assumed that he meant he did know that many of them did carry cards. Objection overruled.

Q. Did the Communist Party to your knowledge have membership rolls at this time?

Mr. McTernan:
Same objection.

The Court:
Same ruling. If he knows, the Court will permit him to answer.

A. I didn't see any.
Q. To your knowledge, during the entire period of time, starting in 1949 and up to September in 1950, was Jencks ever replaced in his position on the State Board of the Communist Party?
A. Not to my knowledge.

Mr. Alderman:
Your witness.

Mr. McTernan:

We move to strike the entire testimony of this witness on the ground that it is remote, has no probative value to any issue in this case, and upon the other grounds previously urged with reference to testimony long antedating the critical date charged in the indictment.

The Court:

Motion overruled and denied.

Mr. McTernan:

We move to strike all the testimony dealing with meetings, statements, teaching, not in the presence of or shown to have been approved or ratified or authorized by the defendant Jencks. Speci—

The Court:

Motion is overruled. Pardon me, I thought you were through.

Mr. McTernan:

Specifically in the record all of that material beginning with the interrogation about his being a security officer and following down to the end of his testimony.

The Court:

Motion is overruled.

Mr. McTernan:

At this time we request that, without delaying the trial, the cross-examination of this witness be deferred until we have had opportuntiy to prepare it. In this connection, we again call to the Court's attention all of our objections to the vagueness and the ambiguity of the indictment, the denial of the bill of particulars, the

denial of the documentary evidence under Rule 17(c). the quashing of our pre-trial subpoenaes, an absolute inability to find out in any way that the defendant is charged with or what he would have to meet in connection with this case; specifically, the Court's refusal to require the Government to specify any overt acts upon which it relied to show that the defendant knew he was a member of or affiliated with the Party, contrary to the holding in the Remington case and in the Gold case. I say, Your Honor, as an officer of the Court and in all good faith, it is utterly impossible for defendants and lawyers, no matter how hard they work, no matter how acute their powers of observation and conjecture may be as to what it is a defendant in this case has to meet, it is impossible for them to prepare in advance. The prosecution is free to roam over the entire country, and it has roamed over the entire country. It is free to call upon anybody who may be associated with Jencks, no matter how briefly, or no matter in what connection; and it is free to cover subject matter which we could possibly have no knowledge of whatsoever; and in view of this, in view of the fact that these witnesses are people whom we have never seen before and don't know, we simply cannot prepare a meaningful cross-examination without an opportunity to work on it.

The Court:

Motion and request is overruled and denied.

On Cross-Examination.

Questions by Mr. McTernan:

Q. What is your full name?

A. Jerry Wilburn Ford.

Q. J-e-r-r-y?

A. That is right.

Q. How do you spell your second name?

A. W-i-l-b-u-r-n.

Q. And where do you live at the present time?

A. I live in Los Angeles.

Q. Where in Los Angeles?

A. I live at 1061 West 51st Place.

Q. And what is the name of your church?

A. I am the minister of the Second A. M. E. Church.

Q. And where is that located?

A. 43rd and San Pedro Place.

Q. How long have you been connected with that church?

A. With that particular congregation a little over a year.

Q. And with what congregation were you connected before that?

A. Immediately prior to that I was the minister of an A. M. E. Church in Phoenix.

Q. And where was that located?

A. That was located on the corner of 8th and Jefferson Street, East Jefferson Street.

Q. And how long were you connected with the church in Phoenix?

A. Approximately two years.

Q. Where were you connected before that?

A. Immediately before that I was in Albuquerque, New Mexico.

Q. And in what capacity?

A. As a minister of Grant Chapel, A. M. E. Church.

Q. What was the address of that church?

A. Present address?

Q. No, the address at the time?

A. 311 West Coal Avenue.

Q. C-o-l-e?

A. C-o-a-l.

Q. And you say the address of that church has been changed?

A. Yes.

Q. What is the address now?

A. I believe it is the corner of Santa Fe and Arno Streets.

Q. A-r-no-l-d?

A. A-r-n-o.

Q. Did you have any church before you were connected with Grant Chapel?

A. I did.

Q. Where was that?

A. Salt Lake City, Utah.

Q. And—incidentally, how long were you in Albuquerque?

A. Three years.

Q. Between what years?

A. I believe it was betwen 19—let's see, 1948, 1949, and 1950.

Q. And during what period were you in Salt Lake?

A. I was in Salt Lake in 1945 and 1946.

Q. What was the name of the church there?

A. Trinity A. M. E. Church.

Q. And where were you between '46 and '47?

A. Between '46 and '47? Let's see, in that immediate period I was in Salt Lake City and in Albuquerque.

Q. You were transferred from Salt Lake to Albuquerque?

A. I was.

Q. There was a gap between the two connections, the one in Salt Lake and the one in Albuquerque?

A. No, there was no gap.

Q. Did you have a church before you were in Salt Lake?

A. Yes.

Q. Where?

A. In Mesa, Arizona.

Q. For what period of time?

A. That was in 1945; from 1943 to 1945.

Q. Was that an A. M. E. church also?

A. It was.

Q. And did you have a church before the one in Mesa?

A. Well, I was what you call a circuit minister. That was my first pastorate and that was connected with the church in a little area outside of Phoenix called Okemah.

Q. And was that your first church, the one in Okemah?

A. Yes, the two were connected and I was the minister of both of them around the same time.

Q. You say the two were connected, you mean the one in Okemah and the one in Mesa?

A. I was the minister of both.

Q. But those are the two you refer to?

A. Yes.

Q. Where did you take your divinity training?

A. At a seminary which is operated by our church near Kansas City, in Quantaro, Kansas. It is called the Western University School of Religion.

Q. And would you spell the name of that town in Kansas?

A. Q-u-a-n-t-a-r-o. It is a small city outside of Kansas City, Kansas.

Q. Where were you born and raised, Mr. Ford?

A. I was born in Pine Bluff, Arkansas. I left there when I was about seven years old and spent most of my life in Phoenix, Arizona.

Q. Now, when did you join the Communist Party?

A. Approximately in 1946.

Q. And you were in Salt Lake City at the time?

A. That is correct.

Q. And did you join the Communist Party at that time out of conviction or because you were requested to do so?

A. I joined out of both, and I would like to explain.

Q. You mean that you were convinced at that time that you should join the Communist Party in order to give information to the F. B. I.?

A. No.

Q. When did you begin giving information to the F. B. I.?

A. In 19—let's see, 1948.

Q. Were you first requested to give information to the F. B. I. in 1948?

A. I don't understand what you mean.

Q. Did the first request from the F. B. I. for information come to you in 1948?

A. Yes, but I made the initial approach.

Q. You made the approach to them, and did you do that in Albuquerque?

A. I did.

Q. Do you know the name of the person you talked to in the F. B. I.?

Mr. Alderman:

We object to that. It is certainly immaterial who he spoke to.

The Court:
Objection is overruled.

Mr. Alderman:
There is no need to go into the operations of the F. B. I., Your Honor.

The Court:
No, we are not going into that. This was a question as to who talked to him about the matter in Albuquerque. Objection overruled.

A. I don't recall the name of the individual to whom I first talked because I walked into the F. B. I. office and spoke to someone who was in charge. I don't remember the name and cannot describe the person.

Q. And up to that time you had been a member of the Communist Party out of conviction?

A. As I said before, out of both conviction and request.

Q. And who made the request?

A. A doctor in Salt Lake City, Utah.

Q. What was his name?

A. Nickerson.

Q. Dr. Nickerson?

A. Dr. Nickerson.

Q. Is he a medical doctor?

A. I believe he was. I am not sure of his status at that time. I think he was employed at the University of Utah medical school, and I don't—it seems to me that he was working on his M. D. but he did have his Ph. D., but I think since that time he has become an M. D.

Q. And he requested you to join the Communist Party?

A. Yes.

Q. And you did so?

A. I did.

Q. Then sometime in '48, am I correct, in '48 you decided to go to the F. B. I.?

A. That is correct.

Q. Now, between 1946, when you joined the Communist Party, and 1948, when you went to the F. B. I., did you furnish any information to the F. B. I. or any other governmental agency concerning the Communist Party?

A. I did not.

Q. Following your visit to the F. B. I. Office in 1948 did you begin to furnish information to the F. B. I.?

A. Will you ask that again?

Mr. McTernan:

May the question be read?

(The reporter repeated the question).

A. I did.

Q. And about what month was it in 1948 that you went to the F. B. I.?

A. I think it was around August, or July, 1948. I am not positive about the exact date.

Q. You can't fix it any more closely than sometime in July or August, 1948?

A. No. I think I can say July.

Q. You want to narrow it down to July, is that right?

A. I can tell you of some events which prompted me to leave it and enable you to fix the time in your mind more definitely.

Q. I just want to know what your recollection is as to the month. Was it July, 1948?

A. The only way I can fix time is—

Q. If you can't say it was July, say so. I am not asking—

A. As I originally said, I believe it was July.

Q. Your best recollection is that it was July, is that right?

A. Yes.

Q. Now, from that time on did you submit reports to the F. B. I. about the Communist Party?

A. I did.

Q. And how frequently did you supply those reports?

A. There was no particular time pattern there. I made reports sometimes once a week, soemtimes once a month, and at various other times; maybe three or four times a week, depending on the number of meetings I attended and the distance between the meetings.

Q. And was it your practice to give the F. B. I. a report as soon after the meeting as you could?

A. Yes, sir.

Q. While things were still fresh in your memory?

A. Yes.

Q. So that would you say that as it worked out generally in practice you would make up your reports a day or two after each meeting?

Mr. Alderman:

Your Honor, May I object to this line of questioning. I don't think it is pertinent to go into the mode of operation of the F. B. I.

The Court:

He is not going into the secrets of the F. B. I. He is asking to whom he reported and when he reported. Objection overruled.

A. I can't say there was any definite pattern. I do know I made it a practice to report as soon as possible.

Q. In order to have your recollection in its freshest, is that correct?

A. Yes, sir.

Q. And did you receive any money from the F. B. I. in connection with the work you were doing for them?

A. I did.

Q. And were you paid a regular compensation?

A. It was regular, yes, but not as to amounts. It depended upon my expenses involved and the period of time in which I supplied information.

Q. Did you receive money for anything besides expenses?

A. It depends on what you call expenses.

Q. Well, what did you call expenses?

A. I called it using of gas in my automobile to travel to meetings, to pay dues in the Communist Party, to support fund-raising activities, to make placards for picket lines to write letters to individuals, and such as that.

Q. Did you receive money—withdraw that. All of these things that you have just referred to you meant to describe under the general heading of out of pocket expenses?

A. Oh, no, of course not. At times expenses were less than the amount paid. Many times.

Q. Let me put it this way. You were reimbursed by the F. B. I. for your out-of-pocket expenses, were you not, for such as gas, oil, and dues. Those things you got reimbursement for, is that right?

A. Plus if it happened to have been more, and at times it was more.

Q. Well, then, the "more" was money paid you for your time, is that right?

The Witness:
Could I explain?

The Court:
Well, answer the question first and then you can explain later.

A. Will you ask it again?
Q. You said you got your out-of-pocket expenses and "more". What I am trying to find out was the "more" paid you for your time?
A. It was a lump sum payment and I could do with it whatever I wanted to do.
Q. And how much was the sum, the lump sum payment?
A. It varied.

Mr. Alderman:
Your Honor, if counsel will consent to it we will stipulate to the amounts paid for each year to this witness for his expenses and his work with the F. B. I.

Mr. McTernan:
Obviously, Your Honor, we are not in a position to enter into a stipulation. We would be glad for counsel to state it for the record since—

The Court:
All right, since you don't want to stipulate it is your privilege to proceed with this witness.

Mr. McTernan:
I said I would be willing to have counsel's statement put into the record if he wants to make it. I don't make a stipulation to the Court unless I have some knowledge of the facts.

Mr. Alderman:

In the interest of saving time we can prepare the stipulation and show it to counsel.

The Court:

You can do that during the noon hour, and Mr. McTernan can proceed with his cross-examination in any way he sees proper.

Mr. McTernan:

Thank you, Your Honor.

Q. Did the amount of payment—withdraw that. Were you paid a flat sum per month?

A. Most of the time, yes.

Q. And did that amount change from time to time?

A. It changed I think about three times.

Q. And what was the beginning amount?

A. I am not positive of the exact amount.

Q. What is your best recollection?

A. I believe it was something like fifty dollars a month.

Q. And what was the amount you were paid at the end of the period of service?

A. About the same. I think it was the same.

Q. I understood you to say it changed from time to time?

A. It did.

Q. Did it go up and then go down again?

A. Yes.

Q. What was the highest amount?

A. I think around a hundred and fifty a month.

Q. And as I gather the facts from your testimony, Mr. Ford, this was a flat amount paid by the month which either reimbursed you for all of your out-of-pocket

expenses plus some, or for all of your out-of-pocket expenses, is that right?

A. Yes.

Q. And if your out-of-pocket expenses exceeded whatever the sum you were being paid at any particular time were you paid some beyond that?

A. I would be given the stipulated sum and that was all.

Q. Even if your out-of-pocket expenses went above the stipulated sum?

A. Well, occasionally, I think there was about an occasion or two when I was given expenses above what the flat monthly sum would be.

Q. Now, when did your connection with the Communist Party cease?

A. Actually it has never ceased.

Q. You go to Communist Party meetings now?

A. No.

Q. You pay dues to the Communist Party now?

A. No.

Q. Do you accept assignments of responsibility from anyone in the Communist Party?

A. Actually not in recent months, but about a year or so ago I did accept assignments. A little over a year ago, up until the time I left Phoenix.

Q. Well, you left Phoenix on what date?

A. I don't know the exact date but it was in September of 1953—1952, I mean.

Q. Now, in other words, would it be accurate to say that you stopped being active in the Communist Party in September of 1952?

A. Yes, active as far as participation in meetings and carrying out of assignments.

Q. Now, since September, 1952, you have gone to no Communist Party meeting?

A. That is right.

Q. And you have paid no dues?

A. That is right.

Q. And you have accepted no assignments?

A. I have been given none.

Q. Are you assigned to any particular subdivision of the Communist Party at the present time?

The Witness:

Your Honor, I would like to explain my present position.

The Court:

Answer the question and then you may.

A. I think I am.

Q. Well, when you moved out of Phoenix in 1953 did you apply for a transfer in the Communist Party?

A. I did not.

Q. And you moved from Phoenix to Los Angeles?

A. That is right.

Q. And when you got to Los Angeles did you call upon any repreesntative of the Communist Party to establish yourself with the Communist Party there in Los Angeles?

A. I called upon some people whom I knew as Communists in my previous associations.

Q. And were you received into any branch or subdivision of the Communist Party after you went to Los Angeles?

A. No.

Q. When you were in the Communist Party you were taught that the requirements of membership are regular attendance at branch or club meetings, payment of dues, or acceptance of Party responsibility, weren't you?

A. Yes.

Q. And you haven't done any of those things since you moved to Los Angeles, have you?

A. Of course—

Q. Can't you answer that "yes" or "no"?

A. I can't answer that "yes" or "no". I would like to—

Q. I will break it down for you.

Mr. Alderman:

Your Honor, he has a right to explain his answer.

Mr. McTernan:

He hasn't given an answer yet.

Q. Since you went to Los Angeles have you paid any dues?

A. No.

Q. Since you went to Los Angeles have you attended any club or branch meetings?

A. No.

Q. Since you went to Los Angeles have you performed any assignment of responsibility from the Communist Party?

A. No.

Q. You don't consider yourself a member of the Communist Party now, do you?

A. I can't answer that "yes" or "no". I would like to explain my position.

The Court:

All right.

A. When I was in Phoenix—

Q. We are talking about Los Angeles, not Phoenix?

A. I am trying to explain my situation which will clarify my present status.

The Witness:
(To Court). May I continue?

The Court:
Yes, the Court thinks you are entitled to that.

A. When I was in Phoenix, Arizona, as a member of the Communist Party, I refused to carry out an assignment which had been given to me by the Communist Party because of conviction, I felt that it was against the best interests of the Negro people of the City of Phoenix. I felt like a perpetrator.

Mr. McTernan:
Now, Your Honor, we are not interested in all of this.

The Court:
Yes.

A. Well, I refused to accept an assignment. I was called before the County Board and—

Mr. McTernan:
This goes to the question of whether or not he considered himself a member of the Communist Party in Los Angeles?

Mr. Alderman:
This goes to his status. He was called before a disciplinary board.

The Court:
You will confine yourself to the explanation of the question.

A. I was called before a County Board to give an explanation for my actions in failing to carry out this assignment. This explanation was not accepted. I was severely criticized and suspended for sixty days. During the sixty-day period I never ceased to accept assignments from the Party. Also during that sixty-day period I made regular contacts with individuals.

Mr. McTernan:
He hasn't gotten to Los Angeles.

The Court:
Let's get down to Los Angeles.

A. Well, the suspension was never lifted but I never ceased activity until I left Phoenix.

Q. Now, you have left Phoenix and were in Los Angeles. Have you engaged in any activity in the Communist Party since you got to Los Angeles; can you answer that "yes" or "no"?

A. No.

Q. Since you got to Los Angeles have you considered yourself a member of the Communist Party?

A. I don't know.

Q. And how long have you not considered yourself a member of the Communist Party?

A. Since a few weeks after arriving in Los Angeles.

Q. Well, you haven't considered yourself a member of the Communist Party for over a year, is that right?

A. About a year.

Q. And do you consider that you have withdrawn from the Communist Party?

A. That is rather difficult to answer, Your Honor, in a "yes" or "no". I consider myself now as having withdrawn from the Communist Party.

Q. Sometime over a year ago you did that, is that right?

A. About a year ago.

Q. And all connections between you and the Communist Party ceased over a year ago, is that right?

A. Not all connections.

Q. Well, all connections on a membership level ceased over a year ago, is that right?

A. Yes.

Q. As a result of your voluntary action, is that right?

A. Not voluntary; involuntary.

Q. Somebody forced you to do what you did?

A. Somebody forced me to be suspended for sixty days.

Q. And you never picked it up again, is that right?

A. They never picked me up again.

Q. And you decided you didn't want to pursue the matter any further, is that right?

A. I wanted to pursue the matter in order that I might provide information to the Federal Government.

Q. Now, you were in the Communist Party from 1948 to 1952 not because you were convinced of its purposes or objectives, or accepted them as your own, but only in order to furnish information to the F. B. I., is that right?

A. I accepted some of the principles and objectives as originally taught to me, but for the most part I was in the Party in order to provide information for the F. B. I.

Q. And during all of that time you were also a minister of the gospel actively engaged in Albuquerque or some other city, is that right?

A. That is right.

Q. Was there any conflict in your mind between your role as a purveyor of information to the F. B. I. and your religious teachings, about being a Judas Iscariot?

A. There was absolutely none. I felt that due to the shame I had brought upon my congregation in leading them and many Negro people into a situation which might have placed them in jeopardy as far as their loyalty to the United States Government, I felt that I could do nothing better than to vindicate myself and them by squarely placing myself at the service of the Government in proof of my loyalty as a United States citizen.

Q. And you did this openly and publicly?

A. I did not.

Q. You did it secretly, didn't you?

A. Yes.

Q. And while you did it you pretended to be a bona fide member of the Communist Party?

A. That is correct.

Q. And Communist Party members are judged, aren't they, by their performance for the Party?

A. I don't understand what you mean.

Q. Well, aren't Communist Party members judged by the Party on the basis of how much they accomplish for the Party?

A. You mean does the Party judge them or does the public?

Q. Does the Party judge them on the basis of how much they do for the Party?

A. I would think so.

Q. And you wanted to appear to be a good bona fide member of the Party during this period from '48 to '52, didn't you?

A. In order to supply information, yes.

Q. In order to secure your position in the Party so as to be able to supply information, is that right?

A. That is right.

Q. And with the hope of advancing in the Party so you could supply more and better information, isn't that right?

A. I wasn't particular about any advancement, so long as I could supply information secretly.

Q. Without anybody else knowing about it?

A. Except the United States Government.

Q. Except the United States Government. One of the things that Party members were called on to do in those years was to recruit members into the Communist Party, isn't that right?

A. That is right.

Q. Did you recruit members into the Communist Party during that period?

A. I had no particular responsibility for recruitment. I did meet—

Q. I didn't ask you that. I asked you whether you did in fact recruit persons into the Communist Party in the years '48 to '52?

A. I did not.

Q. Were any persons recruited into the subdivision of the Party to which you belonged during that period?

A. Yes.

Q. And as a member of the Party you welcomed them into membership, didn't you?

A. If you mean by "welcoming" saying "you're welcome" I did not, but I did not say "you are not welcome".

Q. Did you attempt during this period, Reverend Ford, to recruit people into the Communist Party?

A. No.

Q. You mean you didn't ask anybody to join the Communist Party during that period?

A. I don't recall that I did.

Q. That is your best recollection now?

A. That is my best recollection.

Q. Didn't you have any particular assignments in the Communist Party as to people you might be able to work on, so to speak, to work into the Party?

A. Yes.

Q. And did you work on those people?

A. No, not in the sense that the Party wanted me to.

Q. Did you talk to them at all about the Communist Party and its objectives?

A. Not in the sense of recruiting.

Q. Now, I am not asking you to limit your answer to any sense at all. What I want to know, did you talk to these people that you were supposed to talk to about the program and objectives of the Party? Can't you answer "yes" or "no"?

A. It is difficult because it seems that your question would lead me into stating that I tried to recruit them through that method. I did talk to people about Communist. I did talk to people about the aims and objectives of the Communist Party.

Q. And in some of those discussions at least you spoke favorably of the aims and objectives of the Party, didn't you?

A. I spoke of it as it was taught to me.

Q. It wasn't taught to you in the Communist Party in a manner hostile to the Communist Party, was it?

A. No.

Q. Now, wasn't one of your assignments in the Communist Party during the period '48 to '52 to try to enlist new readers of Party literature?

A. I don't recall that that was any particular assignment. I recall giving the literature to some individuals, placing at their disposal.

Q. Weren't you asked to sell subscriptions to a daily newspaper?

A. I never did. I was asked but I never did.

Q. And the Party brought out pamphlets from time to time that you were asked to distribute to non-Party people, weren't you?

A. I was asked, yes.

Q. And didn't you do that?

A. No.

Q. When you were in the Party and attending its meetings or associating with its members you pretended to be their friend, didn't you, in the period 1948 to 1952?

A. As far as Communism was concerned I did.

Q. Well, you found that the people in the Communist Party felt rather deeply about their association with each other, didn't you?

A. And I also felt the same about many of them.

Q. You mean you felt that they were fine people?

A. I feel that in the Communist Party there are some excellent people.

Q. I am talking about the people that you associated with in '48 to '52?

A. Some of them were the finest of people.

Q. And you regarded them as fine citizens in every respect, is that right?

A. Not in every respect.

Q. But in many respects?

A. In almost all respects.

Q. And did you have a personal association with these people beyond your connections in the Party itself?

A. Some of them.

Q. They come to your home?

A. Not too many of them.

Q. Well, did some of them come to your home?

A. Two or three.

Q. And did you go to the homes of many of them?

A. Many of them.

Q. On a social basis?

A. Yes.

Q. And you acted with them as if you were a friend of theirs when you went to their home, didn't you?

A. Actually I considered myself as their friend.

Q. And you acted in that fashion, isn't that right?

A. Yes.

Q. When you were furnishing information to the F. B. I. in the period 1948 to 1952 you gave the names of these people to the F. B. I., didn't you?

A. Yes.

Q. These friends of yours?

A. Yes.

Q. These hight type people?

A. Some of them were high type, I said.

Q. Yes. Did you find any conflict there between what you were doing and your Christian teachings concerning the role of Judas Iscariot?

A. Whenever I explained to the F. B. I.—

Q. Can you answer that "yes" or "no" and then explain it?

A. I can't answer that "yes" or "no" without explaining my answer.

The Court:

All right.

Mr. McTernan:

May the witness be directed to answer that "yes" or "no" and then explain?

The Court:

If you can answer you are instructed to answer "yes" or "no".

Mr. McTernan:

I don't want to block off his explanation. I simply want an answer before his explanation, that is all.

The Court:

You can answer "yes" or "no" and then explain.

Mr. McTernan:

May the question be read?

The Reporter (reads):

"Q. Did you find any conflict there between what you were doing and your Christian teachings concerning the role of Judas Iscariot?"

A. No, I did not, because within the Party, as I stated before, there were many many people whom I admired and loved, and still admire, but I felt that they had fallen into the same trap which I fell into, and feeling that there was tremendous hope that they would leave the Party I so informed the F. B. I. as to their depth of sincerity according to my knowledge, and their length and depth of service to the Party, which included many times my saying to the F. B. I. that this individual here is someone whom I knew as a Communist but knowing them on a social basis I know definitely that they do not agree in sum total to the program of the Communist Party of the United States.

Q. You turned their names over to the F. B. I. for their own good?

A. No, for the good and safety of the Government.

The Court:
Will you be much longer, Mr. McTernan?

Mr. McTernan:
Yes, Your Honor.

The Court:
I think we will take our noon recess right here.

(Whereupon at 12:05 P. M., on January 13, 1954, a recess was taken until 2:00 o'clock P. M. the same day, at which time proceedings were resumed as follows):

(The witness Ford resumed his seat on the witness stand).

Mr. McTernan:
Before the luncheon recess, Your Honor, the prosecution offered to supply data concerning payments to this witness from the F. B. I. for his services. May I ask whether the prosecution is ready to supply that data at this time?

Mr. Alderman:
Your Honor, I don't believe we offered to supply any data. We offered to try to arrange a stipulation.

The Court:
Yes, but I don't think counsel is compelled to do so. If you want to offer him that information you may do so; if not he can elicit it from this witness and in fact he has done so.

Mr. Alderman:
I believe so.

Mr. McTernan:

Then we will spend some time on it. I thought counsel had offered it as an arrangement to cut time.

Mr. Alderman:

I thought we might enter into a stipulation as to how much he was paid each year.

The Court:

The Court don't regard that as a stipulation. If you want to give it to him in lieu of interrogating this witness further on that subject you may do so.

Mr. Williams:

Your Honor, may he understand that that concludes the examination if we furnish such information?

The Court:

No.

Mr. Williams:

There is no use in us ex-parte furnishing that information.

The Court:

All right.

Mr. McTernan:

In that case we will proceed.

On Cross-Examination Resumed.

Questions by Mr. McTernan:

Q. Your first month with the F. B. I. was about July of 1948, is that right?

A. Yes, sir.

Q. And how much were you paid in the month of July, 1948?

A. I don't recall the exact amount but I think it was around fifty dollars.

Q. And how much were you paid in August of 1948?

A. I think about the same.

Q. You have no records from which you can get the precise amount?

A. Of course, I kept no month to month stipulated record.

Q. Did you put this money in a bank account?

A. Some in the bank account; some I used as a cash disbursement from my own pocket.

Q. So that you have no record now that should show each payment?

A. Not as such.

Q. Did you list these payments on your income tax return?

A. I did.

Q. You have copies of your income tax returns?

A. I have my personal copy which is a duplicate of the one I filed.

Q. Do you have that with you?

A. No.

Q. Where is it?

A. It is in my possession in Los Angeles.

Q. Would it be possible to have it sent to you before you leave the stand?

A. Before I leave the stand?

Q. Yes?

A. I don't know.

Q. Well, do you have any record—withdraw that. Could you wire someone in Los Angeles and ask them to put it in the mail so we could get it tomorrow morning?

Mr. Alderman:

I would like to object to this going into a man's confidential figures with the Bureau of Internal Revenue.

Mr. McTernan:

I have asked for no record.

The Court:

The Court don't think he can disclose his income tax record.

Mr. McTernan:

I am not asking for the record. I am asking if he can get it to refresh his recollection. The Government can't give it to us, and he hasn't given it to us here.

The Court:

Well, even so, a man's income tax report is personal and private.

Mr. McTernan:

I have not asked for his income tax return. I have asked him if it is available to him so he can refresh his recollection for the purposes of testifying here.

The Court:

Of course, he doesn't know how long he will be on the stand, and it is in California, and then the question of whether or not he would be asked to produce it and the Court would hold that he would not have to.

Mr. McTernan:

I am not asking that he produce it, only that he refresh his recollection from it.

The Court:
Objection sustained.

Q. Well, can you remember what you were paid in September of 1948?

Mr. Alderman:
Your Honor, excuse me. I would like to object to this question and this line of testimony. The witness has already stated the minimum that he was paid each month, and the maximum amount, and that he does not recall exactly how much he got in the individual months, and I don't think it is material to the issues in this case exactly the amount which he received. I don't see how it would shed any light on the case.

The Court:
Objection overruled.

Q. You remember what you received in September of 1948 from the F. B. I.?

A. Not as to the exact amount. In September, you say?

Q. Yes?

A. I am not positive of the exact amount.

Q. What is your best recollection?

A. My best recollection would be fifty dollars.

Q. And do you remember the amount you received in October of 1948?

A. No, I don't recall the exact amount.

Q. What is your best recollection?

A. My best recollection would be that it would be fifty dollars.

Q. And what did you receive in Novemebr of '48?

The Witness:
Your Honor, may I explain?

The Court:
First answer the question if you can.

The Witness:
Well, I can't testify as to the exact amount on any of these months, and there is a reason for it.

The Court:
If you want to explain your answer and it is pertinent the Court will permit you to do so.

Mr. McTernan:
He hasn't answered it yet. The question is what he received in November of '48.

A. During this period I think, to the best of my knowledge, as I recall, it was around fifty dollars, but there was some months when I received more and I am not sure as to the exact month. If there was an extra meeting or a trip I had to make, or some expense involved in an activity, then that required more money and I am not prepared to say exactly how much that was, and I would hesitate to stipulate a definite amount.

Q. All I am asking you for is your recollection, Mr. Ford. Is it your recollection now that you received fifty dollars in the month of November, 1948, or some larger amount?

A. I think it was larger.

Q. And how much was it, approximately?

A. It would probably be around a hundred and fifty.

Q. And do you recall what you received in December, 1948?

A. To the best of my knowledge around a hundred and fifty, I would say.

Q. Do you remember what you received in January of '49?

A. In January of '49 I would say around a hundred and fifty.

Q. And February of '49?

A. Around a hundred and fifty.

Q. Maybe we can save a little time here. Is it your recollection that you received one hundred and fifty dollars each month in 1949?

A. Up until September of 1950 to the best of my knowledge I recall that I received around a hundred and fifty a month, with variations, of course.

Q. Now, let's take it year by year. In 1949, as you recall it, you received one hundred and fifty dollars a month each month?

A. Around that amount.

Q. Approximately that amount?

A. To the best of my recollection.

Q. It might be more?

A. Yes.

Q. Now, in 1950, is it your recollection that you received one hundred and fifty dollars a month through September of 1950?

A. Well, in September of 1950 I moved to another city and my payments were less than what they were immediately prior to my moving.

Q. I am only talking about the time; you moved in September, you say?

A. Yes.

Q. All right. Now, up to the time you moved, before you moved, in 1950, did you receive a hundred and fifty dollars a month, approximately each month?

A. Up to that time.

Q. And would that be for nine months?

A. Well, of course, I would have to count (hesitates)—

Q. September is the ninth month of the year. Did you receive one hundred and fifty dollars a month for each of the nine months of 1950?

A. I would say to the best of my recollection that it would be right around that amount.

Q. And, now, beginning from October, through December of 1950, can you recall how much you received each of those months?

A. I would say approximately fifty dollars a month.

Q. Now, in 1951, can you remember whether you received approximately the same amount each month in that year?

A. Approximately the same amount.

Q. And what was that amount?

A. Approximately fifty dollars a month.

Q. That is for all of the twelve months of that year, is that right?

A. Let's see—1951? Yes.

Q. And that was while you were in Phoenix, is that right?

A. That is correct.

Q. And in 1952 did you receive approximately the same amount each month?

A. Approximately the same amount each month.

Q. And what was that?

A. Approximately fifty dollars.

Q. And was that through September of 1952?

A. Through September of '52, yes.

Q. And after you moved to Los Angeles did you receive any money from the F. B. I.?

A. Yes.

Q. And how much did you receive after you went to Los Angeles?

A. Approximately fifty dollars a month.

Q. For how long?

A. Up until about—let's see—up until about April.

Q. Well, you received fifty dollars a month for three months in 1952, is that right?

A. Well—

Q. That is, October, November, and December, after you went to Los Angeles?

A. Yes.

Q. And then in 1953 you received approximately fifty dollars a month for four months, is that right, through April?

A. I think April would be the approximate month.

Q. So it would be for four months in '53, right?

A. I think so.

Q. After that did you receive any money from the F. B. I.?

A. No.

Q. Now, during any of this period that you were receiving money from the F. B. I. did you receive money from any other agency of the United States Government?

A. No.

Q. Have you testified in any judicial proceedings or administrative proceedings as a witness for the United States Government?

A. No.

Q. Have you testified before any Grand Jury?

A. No.

Q. Are you receiving a fee for your testimony here?

A. A fee?

Q. Yes?

A. No.

Q. Are you receiving any money at all in connection with your testimony here?

A. It is my understanding that my expenses will be paid.

Q. You mean your travel expenses?

A. Traveling expenses.

Q. And you being paid any per diem?

A. I don't know. I don't think so. I am not sure, when I say "expenses", all the money I am to receive, as I understand it, is in connection with my expenses coming here and going back.

Q. Now, when you started to go to the F. B. I. in 1948 you were in Albuquerque, were you not?

A. Correct.

Q. And were you receiving a regular income at that time?

A. Yes. You mean from the F. B. I.?

Q. No, from any other source?

A. Yes.

Q. And what was your monthly income from other sources?

A. I am not positive about it. It varied from time to time.

Q. It would vary from week to week?

A. Yes.

Q. What would it average out on an annual basis?

A. Well—

Mr. Alderman:

Your Honor, we would object to this question.

The Court:

You mean his salary as a minister of the African Methodist Church?

Mr. McTernan:

That or whatever it might be.

Mr. Alderman:

We object on the ground it is not proper cross-examination, no bearing on the direct testimony.

The Court:

Seems to the Court it invades his private business affairs, what he was receiving as a minister of the African-Methodist Church.

Mr. McTernan:

It also goes to the question of interest.

The Court:

The Court appreciates that, and he is going to give you wide latitude on that, but the Court don't think he is required to disclose the salary as a minister. If there is anything else the Court will admit it, like any questionable source of income, or anything that goes to his interest or affect his credibility.

Mr. McTernan:

I simply want to have the facts, Your Honor, which shows the extent to which a witness is interested in the affairs of the government when he has his income supplemented by eighteen hundred dollars a year on the average.

The Court:

The Court will give you every opportunity to do that.

Mr. McTernan:

I would like to be able to compare—

The Court:

If you want to ask him what his average annual salary or income as a minister was the Court will permit it, and then if he had any other income, that reflects on his credibility as a witness.

Mr. Alderman:

I am sorry, I didn't understand.

The Court:

Yes, it goes to his interest and credibility as a witness.

Mr. Alderman:

I don't think the amount of payment he received as a minister would be material.

The Court:

I don't think it has any materiality. Perhaps it indicates his interest in that he received other additional income.

Mr. Alderman:

I don't think it would affect his credibility and it would certainly be an invasion of his privacy.

The Court:

Well, counsel can ask him and if he wants to he can refuse to answer it, and the Court can rule.

Q. What was your average annual income in the year 1949 from sources other than the F. B. I.?

The Witness:

(To Court). Could I decline to answer that?

The Court:

I think it would invade your private affairs if you disclose what you received as a clergyman.

A. I decline to answer that.

Q. Was it more or less than the eighteen hundred dollars a year from the F. B. I.?

A. I decline to answer that.

Q. At the time that you went to the F. B. I. to offer that agency information about your friends in the Communist Party were you in debt?

A. Well, in the first place, when I went to the F. B. I. I didn't go to offer any information about friends in the Communist Party, and as far as being in debt I have been in debt ever since I became a man.

Q. And you were specifically in debt when you went to the F. B. I., weren't you?

A. Not specifically.

Q. You mean you were generally in debt?

A. Insurance premiums, car payment, the purchasing of clothes, medical expenses, and the like.

Q. And you were at that time experiencing difficulty, were you not, in meeting your obligations from your income as a minister?

A. No, no more than the usual difficulties anyone encounters in making a decent living.

Q. Were you at that time, namely, July of 1948, obligated to make monthly payments on indebtedness that you owed?

A. I would say yes.

Q. And do you recall the amount of that monthly indebtedness?

A. No, I don't recall.

Q. Was it more or less than fifty dollars a month?

A. When I admitted to indebtedness I only admit to the usual indebtedness and the usual difficulties that a man has. I had no deep outstanding debt which was pressing to the point of making me want to supplement my income.

Q. You perhaps didn't understand my question. You told me you were making monthly payments on indebtedness. What I wanted to know was whether the monthly payment you were obligated to make at that time was more or less fifty dollars a month. Can you answer that simply?

A. No, I can't answer it simply. It is difficult for me to remmeber. It is very difficult for me to remember during period exactly what my monthly indebtedness would be.

Q. And you don't recall the approximate amount of your monthly payments that you had to make on your indebtedness, is that right?

A. No.

Q. Now, you were in Albuquerque for a little better than two years, were you?

A. For about three years.

Q. And then you moved over to Phoenix, is that right?

A. That is right.

Q. And you were in Phoenix for about two years, is that right?

A. Well—

Q. Or less than two years?

A. About two years.

Q. Under what circumstances did you leave Phoenix and go to Los Angeles?

A. I don't understand what you mean by "circumstances".

Q. Well, how did it happen that you left Phoenix and went to Los Angeles?

A. Any minister of the A. M. E. Church is transferred from one area to another, or from one church to another by appointment of the Bishop of the diocese.

Q. Is that what happened to you?

A. That is what happened to me.

Q. And that is why you left Phoenix and went to Los Angeles?

A. That is right.

Q. And that is the only reason?

A. That is the only reason, absolutely.

Q. Are you married?

A. I am.

Q. How long have you been married?

A. Over eight years. It will be nine years this coming March.

Q. Have any children?

A. I have one child.

Q. In July of 1948, when you saw Clinton Jencks at the founding convention of the Progressive Party in New Mexico, did you hear him make a speech at that meeting?

A. Yes.

Q. And at that time was Clinton Jencks a candidate for any public office?

A. I don't think so.

Q. At that meeting did Clinton Jencks in his speech outline what he conceived to be the proper program of the Progressive Party in New Mexico?

A. I think you could generally call it that.

Q. And, among other things, did he discuss the affairs and the needs of veterans?

A. I don't recall specifically the speech. I recall it was a keynote address.

Q. Do you recall that he said that he was a veteran of World War II and that he was interested in having the Progressive Party serve the interests of veterans in New Mexico?

A. I don't recall any specific contents or points in the speech.

Q. Do you recall that Mr. Jencks is a veteran of World War II?

A. I don't recall.

Q. Did you ever discuss his past life with him?

A. I can't recall any specific conversation, but I think in my association with him we must have talked along those lines.

Q. Do you recall that he told you that he had been a navigator in the Air Force in the South Pacific during World War II?

A. I don't recall that.

Q. Do you recall discussing with him his war record?

A. I don't recall.

Q. When you attended, or after you attended this meeting in Albuquerque in July of 1948 in the founding convention of the Progressive Party, did you submit a report to the F. B. I. on it?

A. No. At that convention I had no contact with the F. B. I.

Q. It was after that convention that you had the contact with the F. B. I., is that right?

A. Yes.

Q. And after you made your contact with the F. B. I. did you give them information concerning activities going on before you made contact with the F. B. I.?

A. Yes, because that is what led me to the F. B. I.

Q. And did you make up these reports in writing?

A. Some of them in writing and some of them oral.

Q. When you gave oral reports were they taken down by someone?

A. I think some notes were taken.

Q. And after you gave the oral reports and the notes weer taken was something typed up for you to sign?

A. No.

Q. Do you recall giving a written report to the F. B. I. concerning the founding convention of the Progressive Party in July of 1948?

A. No.

Q. But your recollection is that you did not give such a report?

A. My recollection is that I told the F. B. I. exactly what went on at that convention and some other events preceding that.

Q. And was that written down?

A. Did I write it?

Q. First, did you write it, then?

A. I don't recall.

Q. You don't recall?

A. I don't recall that I wrote it down specifically, but I am pretty sure I didn't.

Q. Did somebody write it down as you told it to them?

A. I think some notes were taken.

Q. Isn't it a fact that you dictated something in the presence of a stenographer on that convention?

A. No.

Q. Weren't you asked questions and didn't you give answers which were taken down by a stenographer?

Mr. Alderman:

I would like to object to that and to further testimony along these lines dealing with the internal operations of the F. B. I. He has already fully explained his relationship to the F. B. I.

The Court:
Objection overruled.

Mr. McTernan:
May the question be read, Your Honor?

The Court:
Mr. Reporter, read the last question.

(The reporter complied).

A. No.

Q. Your recollection about that is precise, is it; you are sure that you did not either dictate a statement or answer questions which were taken down by a shorthand reporter?

A. I am positive.

Q. Now, do you recall Jencks at this meeting saying that one of the primary problems facing the Progressive Party in the State of New Mexico was to achieve equality for the Mexican-American workers in that state?

A. I don't recall that it was in that speech but I think that was his position.

Q. Now, if you will, just confine yourselves to the questions. We will move along a little faster. I am asking you about that speech. Do you recall what he said in that speech on that subject?

A. I don't recall.

Q. Do you recall his saying in that speech that along with the problem of achieving equality for Mexican-American workers the Progressive Party also had to achieve equality for the Negro people in New Mexico?

A. I don't recall.

Q. Do you recall Jencks saying in that speech that one of the objectives of the Progressive Party was to achieve the repeal of the Taft-Hartley Act?

A. I don't recall.

Q. You don't recall what he said?

A. I don't recall specifically the speech.

Q. All that you can recall now is that he gave a speech, is that right?

A. That he made a speech at that convention.

Q. Before testifying here today with reference to that convention of the Progressive Party in July, 1948, did you consult any paper, writing, or document in order to refresh your recollection?

A. No.

Q. Did you consult any paper, writing, or document concerning that convention for any purpose?

A. No.

Q. Now, do you recall having any conversation with Jencks—let's see, that meeting was in Albuquerque—in Albuquerque concerning the work and the program and activities of the Progressive Party?

A. Yes, I recall one convention.

Q. And isn't it a fact that Jencks told you at that time that he was prepared to work with any group that would further the objectives and program of the Progressive Party?

A. I don't recall that in the conversation to which I am referring.

Q. Do you recall Jencks saying that at any time concerning the program of the Progressive Party?

A. Not specifically, no.

Q. Don't you recall that Jencks told you during the '48 campaign that he was prepared to work with any groups, including the Communist Party, if they were sincerely behind the program of the Progressive Party?

A. I don't recall that.

Q. Do you recall hearing that said by any of the leaders of the Progressive Party in New Mexico?

A. Not specifically, no.

Q. Well, did you hear it said generally by any leader of the Progressive Party in New Mexico?

A. Well, I can explain what I mean if you want an explanation.

Q. Well, what is your explanation?

Mr. Alderman:

Excuse me, before the question is answered, I would like to object. This witness was not permitted to tell what the Communist Party taught in New Mexico at this time. I don't see how it is relevant as to what the Progressive Party taught at this time.

Mr. McTernan:

Well, then, I don't know the meaning of the evidence that was put in on Jencks' connection with the Progressive Party.

The Court:

Objection overruled.

Q. Do you want to explain that answer now?

A. I recall that during that period, that was the founding of the New Party of the State of New Mexico, that it was generally felt by most of the members of the Party that nowhere in the paltform of the convention or the Party should there be found any statement which would reflect upon the Communist Party, upon individuals working with it or belonging to it.

Q. Didn't they say that they were willing to work with Communists so long as Communists were willing to work with the program of the Progressive Party, in substance?

A. By my explanation it is possible that that could have been said.

Q. Now, directing your attention to—withdraw that. At that Progressive Party convention in Albuquerque, in July of 1948, was Mr. DeSanti there?

A. At the Progressive Party convention?

Q. Yes?

A. I don't recall exactly but I believe he was.

Q. And was Mr. Montoya there?

A. I believe he was.

Q. And Mr. and Mrs. Jencks were there?

A. Yes.

Q. Each of those people were active in the Progressive Party in 1948 and thereafter, were they not?

A. Yes.

Q. Now, directing your attention to August of 1948, when you say there was a meeting in Mr. DeSanti's home in Albuquerque. When in August of 1948 was that meeting held?

A. I don't recall.

Q. Well, what is your best recollection as to the part of the month?

A. My best recollection would be perhaps towards the end of August.

Q. You mean within, say, the last ten days of August, something like that?

A. Well, after the 15th, after the middle of the month.

Q. That is as close as you can recall it at this time?

A. I believe so.

Q. Now, do you know what Mr. Jencks' connection with Mine-Mill was in the second half of August, 1948?

A. I don't believe I could say definitely what his office was. I knew he was an officer of the union and was responsible for a good share of its work.

Q. Well, didn't you know that at that time he was connected with Local 890 in the Bayard-Silver City area?

A. I knew that he lived in the area. I knew that Mine-Mill was in the area, and I knew he was connected with it.

Q. In that area?

A. Yes.

Q. And do you recall that in the second half of August, 1948, that union was involved in a strike at Tyrone?

A. I don't recall.

Q. Don't you recall that during the months of August and September Jencks was unable to leave the Bayard-Silver City area except to go to a union convention in San Francisco because of the pendency of that strike at Tyrone?

A. I don't recall.

Q. Do you recall that in September of that year he left the area in order to go over to Arizona and effect a settlement with the company of that Tyrone strike?

A. I don't recall.

Q. Now, this meeting in August of 1948 in Albuquerque, at DeSanti's home, at that meeting Jencks discussed his candidacy as a Progressive Party candidate, is that right?

A. Yes.

Q. And what office was he running for?

A. I believe it was for United States Congress.

Q. And do you recall from what district?

A. No, I don't recall.

Q. And he said in substance that he was going to devote his efforts as best he could to getting out the largest possible vote, is that right?

A. That all of us should.

Q. Not only for his candidacy but for the whole Progressive Party ticket?

A. Yes.

Q. And that is all you can remember about that meeting, is that right? That is, as to what Jencks said?

A. Yes.

Q. Are you sure that this meeting place was at 309 Caroline Avenue?

A. I am positive that that is the address of Joseph DeSanti.

Q. At that time?

A. Yes.

Q. And you are positive that that was his home, is that right?

A. Yes.

Q. Now, when you had left that meeting did you prepare a report on it to the F. B. I.?

A. I wouldn't say prepare a report. I think I gave them a report. I don't know whether it was written or oral. I can't recall.

Q. You don't remember.

A. No.

Q. Well, do you remember whether you gave them a report at all?

A. I remember that I reported on every meeting.

Q. Well, now, other than your general practice to make reports of the meetings can you recall specifically making a report on this meeting?

A. As I said, I gave reports on all of the meetings.

Q. I understood that, and I tried to exclude that from my question, Mr. Ford. I said, other than your general practice do you have a specific recollection of having made a report on this specific meeting?

A. Yes.

Q. You have; and was that report written or oral?

A. I don't recall.

Q. What was your practice with reference to giving reports, was it your practice to give them in writing or to give them orally?

A. My practice was generally oral.

Q. And did you make those oral reports in Albuquerque or somewhere else?

A. Some in Albuquerque, some outside of Albuquerque.

Q. In 1948 did you make them outside of Albuquerque?

The Witness:

I would like to explain that, Your Honor.

The Court:

Answer first.

A. Yes, I made some outside of Albuquerque.

Q. Do you recall whether the report on this meeting, whether you made it in Albuquerque or outside of Albuquerque?

A. I don't recall.

Q. You recall how long it was after the meeting that you made the report?

A. No.

Q. Now, I want to turn to this next meeting that you talked about, in February of 1949. Where was that meeting held?

A. In February of 1949? In Santa Fe.

Q. And where in Santa Fe?

A. At the Hotel DeVargas.

Q. How do you spell that?

A. I believe it is Capital D-e, and Capital V-a-r-g-a-s.

Q. DeVarga?

A. DeVargas.

Q. And when in February was that meeting held?

A. I am not sure of the exact time, just that it was around February.

Q. Well, place it as specifically as you can in February?

A. It is a little difficult to do. I would say around the middle of the month.

Q. Well, you mean around the 15th or 16th of February?

A. I would say around the 15th or 16th.

Q. Is that as precisely as you can put it?

A. Yes.

Q. And are you clear in your mind about that?

A. I am not clear as to the exact date.

Q. Is there anything to which you could refer to clear up your recollection on this?

A. I don't understand what you mean.

Q. Well, is there anything to which you can refer that would refresh your recollection, Mr. Ford, as to the date on which this meeting was held in the DeVargas Hotel?

A. No.

Q. Nothing at all?

A. Only my memory.

Q. And can you recall whether it was held in the daytime or night-time?

A. It was at night.

Q. Did you register at the DeVargas Hotel?

A. No.

Q. Was any of the persons whom you have named as having attended that meeting registered at that hotel?

A. I don't believe so.

Q. Was this meeting held in an ordinary hotel room equipped with a bed, bathroom, and so on?

A. No.

Q. Where in the hotel was it held?

A. I believe it was in a club room or some sort of club room. There were only chairs and tables.

Q. And do you know who rented the room?
A. No.
Q. You remember the number of the room?
A. No.
Q. Do you know who made the arrangements for the meeting?
A. I believe Joseph DeSanti did.
Q. But you are not sure; is that right?
A. I have no positive proof.
Q. I didn't ask you if you had proof. I am asking you what your recollection is. Do you have a positive recollection?
A. No.
Q. Could it have been one of the other people whom you say attended the meeting?
A. Making the arrangements you mean?
Q. Yes?
A. Could have.
Q. Who could it have been besides DeSanti?
A. It could have been his wife.
Q. Anyone else?
A. Could have been Montoya.
Q. Anyone else?
A. It could have been someone I didn't know.
Q. Now, are you familiar with the expression "sample room" as hotel people use it?
A. No.
Q. Your best description of this room is that it was a club room?
A. Well, it was a room with tables and chairs.
Q. Was it on the first floor of the building?
A. No.
Q. Could this meeting have been later in February than the 15th or 16th?
A. I don't know.

Q. You just have no recollection?

A. No.

Q. Now, you say that Mr. and Mrs. DeSanti attended this meeting in the DeVargas Hotel?

A. Yes.

Q. And they also attended this meeting in DeSanti's home in Albuquerque?

A. Yes.

Q. And Mr. Jencks attended the meeting in the DeVargas Hotel?

A. Yes.

Q. And he also attended the meeting in the DeSanti's home in Albuquerque?

A. Yes.

Q. And Mr. Montoya attended the meeting in the DeVargas Hotel?

A. Yes.

Q. And he also attended the meeting in the DeSanti home in Albuquerque?

A. Yes.

Q. And you attended the meeting at the DeVargas Hotel and also the meeting in DeSanti's home in Albuquerque?

A. Yes.

Q. And beyond those people you can't remember anyone who attended the DeVargas Hotel meeting, is that right?

A. Yes, I can remember others.

Q. I understand you to say this morning that you couldn't recall any others who attended that meeting?

A. I can't recall. If I said that I would like to correct it.

Q. Well, who else attended that meeting in the DeVargas Hotel?

A. Well, there was Clinton Jencks.

Q. We just mentioned Jencks?

A. There was Joseph DeSanti and Mrs. DeSanti, Alfredo Montoya, and Isabelle Gonzalez.

Q. You recall anybody else?

A. I recall them by description but not by name.

Q. Now, the one name that you have added to your testimony this morning was this Gonzalez woman. Did she attend the meeting at the DeSanti home in Albuquerque?

A. The one to which you referred to a moment ago?

Q. Yes?

A. No, I don't believe so.

Q. The one in August of '48?

A. I don't believe so.

Q. Was it Miss or Mrs. Gonzalez?

A. I don't recall. I think it was "Mrs."

Q. We will refer to her as Mrs. Gonzalez. Was Mrs. Gonzalez active in the affairs of the Progressive Party?

A. Yes.

Q. Now, you say this meeting was held in the DeVargas Hotel in advance of some other meeting?

A. Yes.

Q. And was that a meeting of some other organization?

A. I believe so.

Q. And do you know the name of it?

A. I believe it was the Mexican-American Association.

Q. Is that sometimes referred to as "ANMA"?

A. Yes, sir.

Q. Was ANMA in existence at the time of this meeting in the DeVargas Hotel?

A. I don't recall. I think this meeting was either in preparation for the founding of ANMA or something in connection with its organization.

Q. Now, was the meeting which founded ANMA held in Santa Fe also?

A. No, I don't believe so.

Q. Was it held in Albuquerque?

A. For the state founding it was.

Q. Well, was this meeting in the DeVargas Hotel held in advance of the state founding?

A. Yes.

Q. And was there a meeting which constituted the national founding of ANMA?

A. You mean had it been held?

Q. No. Was there any such meeting?

A. In the future, following this meeting?

Q. Well, looking back at the past now, was there at any time a meeting which founded ANMA on a national basis?

A. Yes, I understand there was.

Q. Where was that kind?

A. I am not positive about the place. It was either in Phoenix or Los Angeles.

Q. You didn't go?

A. No.

Q. Now, as I get it, the squence of meetings was the DeVargas Hotel meeting that you fixed on the 15th or 16th, and then there was a state founding meeting in Albuquerque, and after that a national founding meeting in Phoenix or Los Angeles?

A. I am not sure when the national founding meeting was held, whether it was in that order or some other order.

Q. Well, was the national founding meeting held after the meeting in the DeVargas Hotel?

A. I don't recall.

Q. Was the state founding meeting held after the meeting in the DeVargas Hotel?

A. Yes.

Q. As a matter of fact, wasn't it said at this meeting at the DeVargas Hotel that these people were told to go preparatory to the meeting for the national founding of ANMA?

A. I am not positive about that but I believe so.

Q. Now that is your best recollection?

A. Yes.

Q. So that if it should appear that the founding meeting of ANMA was held prior to February 15th and 16th, then it would be your recollection that there was no meeting in the DeVargas Hotel at all?

A. Well, under no circumstances would I say there was no meeting.

Q. Do you know that the founding, the national founding meeting of ANMA was held on February 11th and 12th, 1948?

A. I recall that following the meeting in Santa Fe in February—

Q. Just answer my question, if you will. Do you recall that the national founding meeting of ANMA was held in February 11th and 12th, 1948?

A. I have no recollection.

Q. Excuse me. I said "48". I meant "49". You understood me that way?

A. I assumed it was the same period.

Q. I didn't mean to mislead you. All these questions are dealing with February, '49. Do you recall now that the national founding meeting of ANMA was held on February 11 and 12, 1949?

A. I don't recall.

Q. You had reports on that meeting, didn't you?

A. On the DeVargas Hotel meeting?

Q. No, on the national meeting of ANMA?

A. I wasn't there.

Q. I asked if you had reports on ?

A. Did I have reports?

Q. Did you supply reports or did you receive reports?

A. I recall some conversation about it.

Q. And did you receive anything in writing on the founding of ANMA?

A. I don't believe so.

Q. Does reference to Lincoln's birthday in February, 1949, refresh your recollection as to when ANMA was founded on a national basis?

A. No.

Q. In any event, the best you can tell us about the DeVargas Hotel meeting was that it was held on February 15 or 16, 1949?

A. When I fixed those two dates I did so with the stipulation that I wasn't clear enough to be exact.

Q. All right, you told us then, and I take it you still tell us, don't you, that that is your best recollection, that it was held on February 15 and 16, 1949?

A. Well, I suppose.

Q. Could you tell us whether it is your best recollection?

A. Yes, at this time.

Q. And it is also your best recollection that the meeting was held before the national founding meeting of ANMA?

A. No, it isn't my recollection at all.

Q. That is not your recollection?

A. That is not my recollection.

Q. In any event, it is your best recollection that the meeting in the DeVargas Hotel was held before the state founding meeting of ANMA?

A. Yes.

Q. And your best recollection is that the state founding meeting of ANMA was held before the national founding meeting of ANMA?

A. It is not my best tecollection.

Q. Now, you referred to a meeting in Hot Springs, or "Truth or Consequences", is that it; the name has been changed to "Truth or Consequences"?

A. I understand that it has.

Q. Do you recall when that meeting was held?

A. I think that meeting was in April.

Q. Of what year?

A. Of '49.

Q. Can you fix the time in April that this meeting was held?

A. I couldn't fix it exactly.

Q. What is your best recollection?

A. Around the first ten days or so of April.

Q. Well, the "or so" leaves that up in the air, Mr. Ford. Would you say your best recollection is within the first ten days of April, 1949?

A. Within the first two weeks.

Q. And your recollection is pretty clear on that, is it?

A. Not clear on the date but clear on the meeting.

Q. Well, I want to know whether it is clear on the date. It is not clear on the date, is that right?

A. Not precisely so.

Q. I want to go back a moment, on the DeVargas Hotel meeting, do you recall specifically making a report to the F. B. I. on that meeting?

A. I don't recall the specific day I made the report or how it was made, but I am positive I made a report.

Q. You base that on the recollection of giving the report or just on your recollection as to what your general practice was?

A. On my recollection as to what my general practice was.

Q. And you can't recall whether this was a written or oral report, is that right?

A. No, that is right.

Q. It could have been a written report?

A. Could have been.

Q. Now, you testified, as I recall it, that Mr. and Mrs. DeSanti were present at the meeting?

A. At the Hot Springs or Truth or Consequences meeting?

Q. Yes?

A. Mrs. DeSanti was not present.

Q. Mr. DeSanti?

A. He was there.

Q. And this is the same Mr. DeSanti that attended the August, 1948 meeting and the February, 1949 meeting?

A. Yes.

Q. And Mr. Montoya was there?

A. Yes.

Q. The same Mr. Montoya that attended the August, 1948 meeting and the February, 1949 meeting?

A. Yes.

Q. And Mr. Jencks was there?

A. Yes.

Q. And the same Mr. Jencks who attended the August, 1948 meeting and the February, 1949 meeting, is that right?

A. Yes.

Q. And you were there.

A. Yes, sir.

Q. The same Mr. Ford who was at the August, 1948 and the February, '49 meetings?

A. Yes.

Q. You say also Mrs. Jencks was present at the Hot Springs meeting?

A. Yes.

Q. And was she present at the August '48 meeting?

A. August?

Q. The one in Albuquerque in Mr. DeSanti's home?

A. I don't believe so.

Q. And was she present at the DeVargas Hotel?

A. No.

Q. Now, outside of DeSanti, Montoya, Jencks, Mr. and Mrs. Jencks, and yourself, you can't remember anybody else at that Hot Springs meeting?

A. I don't believe there was anybody else there.

Q. Now, at this time could you say whether or not the Hot Springs or Truth or Consequences meeting was held any later than April 14, 1949?

A. Could I say that?

Q. Yes. In other words, has anything happened along the way, as this interrogating has proceeded, to make the thing more precise in your memory as to date or to cause you to vary the date in any way?

A. No, I wouldn't be positive as to the date. I am trying to the best of my recollection to fix it.

Q. Could it have been after the 15th of April, 1949?

A. I don't know.

Q. You don't recall?

A. I don't recall.

Q. You recall having been with Jencks at any time during April 17 and 18, 1949?

A. April 17 and 18 of '49?

Q. That is right?

A. I don't recall specifically.

Q. How far is Hot Springs from Albuquerque?

A. I am not positive about the distance but I think it is around a hundred and fifty miles.

Q. And in what compass direction is Albuquerque from Hot Springs?

A. I believe it is north.

Q. And do you know in what direction Bayard is from Hot Springs?

A. I believe it is a little further south, sort of southwest.

Q. You know how far it is from Hot Springs to Bayard?

A. I think about the same distance as from Albuquerque to Hot Springs. I am not sure about the distances.

Q. Were you driving your own automobile in April of 1949?

A. To that meeting?

Q. Yes?

A. No.

Q. How did you get to the meeting at Hot Springs?

A. I went in a station wagon owned by Joseph DeSanti.

Q. And where did you go, if you recall, after the meeting at Hot Springs was over?

A. After it was over?

Q. Yes?

A. I returned home.

Q. You are sure of that?

A. I am positive.

Q. You are sure you didn't go anywhere else?

A. Well, what do you mean by some place else?

Q. Some place else?

A. A hamburger stand, or what?

Q. Some other city?

A. I don't recall that I did.

Q. You recall when you got back to Albuquerque?

A. I am not sure but I think it was at night.

Q. You know what date it was?

A. I don't know the date but I believe it was on Sunday.

(At this point Mr. McTernan confers with Mr. Witt).

Mr. McTernan:

Could we suspend just a moment, Your Honor. I think we are getting a calendar.

The Court:

All right. (After a short pause): If there is going to be a little delay in getting the calendar, I think in view of the extreme heat in this room we might take our afternoon recess a little earlier than usual. The Court will recess for fifteen minutes.

(Whereupon, at 3:00 o'clock P. M. a fifteen-minute recess was taken, after which proceedings were resumed as follows):

On Cross-Examination Resumed.

Questions by Mr. McTernan:

Q. Mr. Ford, just before the recess Mr. Hart went out to get us a 1949 calendar which I have now handed you. Now, does the calendar assist you in any way in fixing the date of the meeting in Hot Springs?

A. Well, the calendar doesn't assist me at all.

Q. You returned to Alburquerque, you say, on a Sunday evening?

A. We left and returned the same day.

Q. And that was a Sunday evening?

A. I believe it was on Sunday.

Q. Was that April 10th or April 17th, as you recall?

A. I can't fix a precise date.

Q. You note from the calendar that April 10th and April 17th are both Sundays?

A. Yes.

Q. You can't tell whether it was one or the other of the Sundays that you returned to Albuquerque from Hot Springs?

A. I can't tell.

Q. You don't recall, is that right?

A. I don't recall.

Q. Now, what other meetings did you have with Mr. Jencks during the month of April, 1949?

A. I don't recall any other meeting.

Q. Is that your best recollection?

A. My best recollection.

Q. Pretty clear on that, are you?

A. Yes.

Q. Well, do you recall seeing Jencks on any other occasion in April of 1949?

A. I don't recall.

Q. Do you recall being in his presence at any other time in April of 1949?

A. I don't recall.

Q. Do you recall being with him in Albuquerque at any time in April, 1949?

A. I don't recall.

Q. Do you recall being with him in Santa Fe at any time in April, 1949?

A. I don't recall.

Q. Now, is the state of your memory that you recall not having been with him at any other time in April, 1949?

A. The state of my memory is that it is difficult to remember that far back to fix specific dates and meetings as far as what you are questioning.

Q. You have the same difficulty in determining or remembering what people said that far back?

A. Only as it relates to what is in my mind.

Q. You remember what you remember?

A. I mean, I am not misquoting people.

Q. Do you have the same difficulty remembering what people said as you have remembering when they said it?

A. It is not the same.

Q. Now, is it your recollection that you were with Jencks only once in the month of April, 1949, to wit: at the meeting in Hot Springs?

A. To the best of my knowledge.

Q. Now, isn't it a fact that you went to Santa Fe in April of 1949 and talked to a Congressman Miles?

A. I don't ever recall going to Santa Fe to talk to a Congressman Miles.

Q. Do you remember that there was a Congressman named Miles from New Mexico?

A. I remember.

Q. Do you remember talking to him in Albuquerque?

A. I do.

Q. And that was in April, 1949, wasn't it?

A. I don't know the date.

Q. Well, wasn't it April 18, 1949, to be exact?

A. I don't remember.

Q. If you will look at the calendar you will notice that April 18, 1949 was on a Monday. Does that help you at all in remembering when you talked to Congressman Miles in Albuquerque?

A. No.

Q. Was there anyone with you when you talked to Congressman Miles?

A. I recall that Clinton Jencks asked me to be a part of the conference.

Q. Well, do you recall that anyone was with you when you talked to Congressman Miles?

A. Yes.

Q. And who was with you?

A. Clinton Jencks.

Q. And three others, isn't that right?

A. I don't remember the number, and I can't remember exactly who they were.

Q. But there were others besides you and Jencks?

A. I believe so.

Q. And you talked to Congressman Miles about the Taft-Hartley Act, did you not?

A. I don't recall the specific subject.

Q. Do you remember whether you saw Mr. Jencks in the next month, May of 1949?

A. I think so, yes.

Q. Was that the time that you saw him with Congressman Miles?

A. No, I don't believe so.

Q. You can't remember when you saw him with Congressman Miles?

A. I don't remember the month or the date.

Q. Wasn't it in April?

A. I don't recall.

Q. Was it in May?

A. I don't recall.

Q. Did you see Jencks more than once in May of 1949?

A. I don't remember.

Q. Do you remember whether you saw Jencks at all in May of 1949?

A. I think I can say that I did.

Q. Well are you sure about this or are you foggy in your mind about it?

A. Well, I am not foggy to the extent of denying that I saw him in May of 1949.

Q. But you are not sure, is that right?

The Witness:

I can explain, Your Honor, why I am not sure I saw him in May.

Q. All I am trying to find out is whether you are sure or not?

A. I am sure.

Q. But are you sure that you saw him only once in the month of May, 1949?

A. I am not sure that I saw him only once in May of 1949.

Q. You may have seen him more than once?

A. I might have.

Q. Or you might not have, you just don't recall?

A. I recall that I saw him.

Q. You don't recall whether you saw him more than once, is that right?

A. That is right.

Q. Now, do you recall that there was an incident in New Mexico, in May of 1949, referred to as the Fierro riot?

A. I don't remember the date, but I remember the case; not details, but I remember the case.

Q. Do you remember that it happened in May of 1949?

A. No, I don't.

Q. Do you have any recollection as to when it happened?

A. No.

Q. Do you remember whether Jencks had anything to do with it?

A. I remember it was a case involving the union and in that capacity he had something to do with it.

Q. You remember it was a case involving violence against Mexican-American workers in Fierro?

A. I wasn't there. I know there was some violence involved. I don't know exactly what the circumstances were.

Q. Don't you know that Jencks was taken up full time with that case during the month of May, 1949?

A. I don't know.

Q. Where did you live in May, 1949?

A. In May of 1949 I lived in Albuquerque.

Q. And how far away is that from Fierro?

A. I don't know Fierro.

Q. How far is it from the Bayard-Silver City area?

A. I think roughly about two hundred and fifty or maybe three hundred miles. I am not positive.

Q. And were you in Albuquerque all during May, 1949?

A. I wouldn't say that I was. I couldn't be sure.

Q. You don't know?

A. I don't know.

Q. Now, did you see DeSanti at any time in May of 1949?

A. Yes.

Q. And where did you see him?

A. I saw him at his home.

Q. And where was that?

A. I believe it is 309 Caroline Avenue.

Q. Where?

A. In Albuquerque.

Q. And are you referring now to this meeting you referred to in your direct examination?

A. Yes.

Q. And among the persons present at that meeting was Jencks?

A. Yes.

Q. The same Jencks who was at the meetings in April, 1949, and February, 1949, and August, 1948, that you referred to earlier, is that right?

A. Yes.

Q. And Mr. Montoya?

A. Yes.

Q. The same Mr. Montoya who was at the meeting in Hot Springs in April of '49, and the DeVargas Hotel in February, 1949, and the DeSantis' home in August, 1948, that you referred to earlier, is that right?

A. Yes.

Q. And Mr. DeSanti was there?

A. Yes.

Q. And he was the same Mr. DeSanti who was present at the April, '49 meeting at Hot Springs, and the February, '49 meeting at the DeVargas Hotel—

A. Yes.

Q. And the August, '48, meeting in Albuquerque, is that right?

A. That is right.

Q. And you were there?

A. Yes.

Q. And you were at these other three meetings also?

A. Yes.

Q. And you can't remember who else was there, is that right?

A. That is right.

Q. Now, did you make a report of this meeting to the F. B. I.?

A. I did.

Q. Was this report given orally or in writing?

A. I don't remember.

Q. Do you have any recollection on the subject at all?

A. On the subject of the meeting?

Q. On the subject of the nature of your report?

A. The nature of my report?

Q. Yes, whether it was oral or written?

A. No. Whether it was oral or written, is that what you said?

Q. Yes?

A. No, I have no recollection.

Q. Now, before you took the stand here today did you read over any of those F. B. I. reports?

A. No.

Q. Before you took the stand here today did you read over any writing at all?

A. No.

Q. With reference to the subject matter of your testimony?

A. No.

Q. You are testifying here only from your unassisted recollection, is that right?

A. That is right.

Q. And you haven't consulted with anything for purposes of determining where or when meetings were held or who was present, or what they said?

A. Just my memory.

Q. And was there a '49 election campaign in the State of New Mexico?

A. I don't recall.

Q. Weren't there elections to state positions in '49 in New Mexico?

A. I remember that while I lived in Albuquerque that there were many elections. I don't recall any specific one.

Q. Oh, I haven't asked you to remember any specific one. All I want to know is whether there were elections to state office in 1949 in New Mexico?

A. I don't remember.

Q. Do you remember whether the Progressive Party ran any condidate for office in New Mexico in 1949?

A. I don't remember that it was 1949, but I remember the Progressive Party running some candidates.

Q. We covered '48; they ran candidates in '48, didn't they? Mr. Jencks ran for Congress in 1948, and Mr. Wallace was on the ticket for President in 1948 for New Mexico, wasn't he?

A. Yes.

Q. Now, coming down to 1949, were there not elections held in New Mexico in which the Progressive Party participated in '49?

A. I don't remember specifically.

Q. You don't recall?

A. I don't recall.

Q. Well, do you remember any campaigns that the Progressive Party participated in, in 1949, whether they were election campaigns or others?

A. I don't recall.

Q. Do you remember a campaign for the repeal of the Taft-Hartley Act?

A. I don't recall.

Q. You recall a petition campaign on the subject of peace?

A. I recall that. I don't know that it was conducted by the Progressive Party.

Q. Well, do you know whether the Progressive Party participated in that campaign?

A. I don't recall.

Q. You mean you have no recollection on it at all?

A. I have a recollection of a petition campaign to the Stockholm Peace Pledge.

Q. In 1949?

A. I don't know whether it was 1949 or what year.

Q. Well, I want to direct your attention to '49. Now, do you remember any campaign, peace campaign, in New Mexico conducted by the Progressive Party?

A. I don't recall.

Q. Well, at this meeting in DeSanti's home, didn't Jencks give a report on New Mexico campaigns which he thought the Progressive Party should participate in?

A. I don't recall.

Q. You don't recall a discussion of the role of the Progressive Party in New Mexico in 1949 with reference to the elimination of discrimination against Mexican-American workers in New Mexico?

A. I don't recall.

Q. You don't remember his reporting on what he recommended the Progressive Party should do with reference to bringing an end to the cold war and securing peace?

A. I don't recall.

Q. You understand that I am talking about the meeting of May, 1949?

A. I understand.

Q. Do you recall Jencks making recommendations with reference to the Progressive Party undertaking a campaign designed to lower prices and lower the cost of living?

A. I don't recall.

Q. Don't you recall Jencks making a report at this meeting in which he said that one of the biggest problems facing labor in New Mexico was the loss of earnings through rising prices?

A. I don't recall that.

Mr. Alderman:

Your Honor, we would like to object to questioning of this nature unless it is understood that we have the right to ask the same type of questions.

The Court:

No, the Court will pass on every question that arises. When each question comes up to which there is an objection by either side the Court will rule on the specific question.

Mr. Alderman:

We would like to point out that we were not allowed to question the witness regarding the policies of the Communist Party and we would object—

The Court:

The Court is giving the defendant wide latitude and will continue to do so, on cross-examination. The objection is overruled.

Mr. McTernan:

Thank you, Your Honor. My questions are dealing with what Mr. Jencks said.

Q. Do you recall Mr. Jencks making a recommendation at that meeting that the Progressive Party undertake efforts in New Mexico to build up sentiment for the repeal of the Taft-Hartley Act?

A. I don't recall.

Q. Do you recall Mr. Jencks making a recommendation at that meeting for a campaign to defeat what was then called the Monk-Nixon Bill before Congress?

A. I don't recall.

Q. I wonder if I recall the phrase to you if I would assist you in your recollection. Do you recall a discussion at that meeting by Mr. Jencks on the opposition to the Slave Labor Bill or the Slave Labor Act?

A. I don't recall.

Q. Do you remember any discussion with Mr. Jencks in which he referred to the Taft-Hartley Act as the Slave Labor Act?

A. I don't recall.

Q. That doesn't help your recollection?

A. No.

Q. You can't say that Mr. Jencks did not report on these things, can you?

A. That he did not report?

Q. That is my question?

A. No.

Q. Now, did you see Mr. Jencks again during the month of May, 1949?

A. I don't recall.

Q. Did you see Mr. Jencks during the month of June, 1949?

A. I don't recall.

Q. Did you see him during the month of July, 1949?

A. I don't remember.

Q. Did you see him during the month of August, 1949?

A. The month of August, no.

Q. Did you see him during the month of September, 1949?

A. I don't recall.

Q. Did you see him at any time after the month of September, 1949?

A. Yes.

Q. When?

A. I believe I saw him in August. I believe it was either July or August of '50. I believe it was July.

Q. But you didn't see him between May, 1949 and July or August of '50, is that right?

A. I might have but I don't recall.

Q. Well, are you clear on that? Did you or didn't you?

A. I don't remember.

Q. Well, do you remember what you said on your direct examination about this?

A. Yes, I think I do.

Q. What did you say on your direct examination about seeing Jencks between May of '49 and July or August of '50?

A. I think—oh, yes, I remember seeing him in, let's see, I believe it was July of—

Q. Excuse me, my question to you was, do you recall what you said on your direct examination about seeing Jencks between May of '49 and July of '50?

A. I recall.

Q. And what did you say on your direct examination?

A. I remembered seeing him just prior to the founding convention of ANMA in the state of New Mexico, and I believe that was held in July of '49.

Q. Don't you remember testifying here a little while ago that the founding convention of ANMA in the state of New Mexico was held in the year 1948?

A. For the state of New Mexico?

Q. Yes?

A. In 1948? No, I don't believe I testified to that.

Q. You don't recall testifying here from this stand in response to my questions after lunch that the founding convention of ANMA for the state of New Mexico was held in 1948?

A. I don't recall.

Q. Do you remember my questions about the Anna meetings in February, 1948?

A. That was February of '49, I thought.

Mr. McTernan:

Excuse me. I think you are correct, Mr. Ford. That is where I got mixed up. I said '48 instead of '49.

(At this point there was laughter through the Courtroom.)

The Court:

We won't have any laughter of any kind. This is a Court of justice. The Court will be cleared if there is any repetition.

Mr. Alderman:

Your Honor, I believe the correct year was 1949.

The Court:

Counsel has said that he was mistaken himself. That is a very common thing with judges and lawyers too.

Q. But you do remember testifying that the founding convention for ANMA in New Mexico was in February of '49, don't you?

A. I didn't testify to that.

Q. Well, do you really remember, Mr. Ford, that you saw Mr. Jencks at any time during the summer of 1949?

A. During the summer of '49?

Q. Yes?

A. Yes.

Q. Now, you have a clear recollection of that, do you?

A. I have a pretty clear recollection.

Q. And you fix that in July of '49, do you?

A. I think it would be around July of '49.

Q. Well, was it in July of '49?

A. I believe it was.

Q. And what part of July in '49?

A. I believe it was about the 10th or 11th, or somewhere around that time. I am not positive about the exact date.

Q. And as clearly as you can make it now it was the 10th or 11th of July of 1949?

A. Yes.

Q. And this founding convention was held in Albuquerque, was it?

A. In Albuquerque. That is, for the state of New Mexico.

Q. And is that where you saw Jencks?

A. Yes.

Q. You are sure of that, are you?

A. I am sure of that.

Q. And did you see him more than once in July of '49?

A. I believe I saw him a few days prior to that meeting.

Q. You mean the founding meeting of ANMA?

A. The founding meeting of Anna.

Q. So that you met with him in July of '49, a few days prior to the founding meeting of ANMA for New Mexico, right?

A. That is right.

Q. And then you also saw him at the founding meeting of ANMA in New Mexico?

A. Yes.

Q. And that meeting, the founding meeting, was held on the 10th or 11th of July, was it?

A. I would say roughly around that time. I am not positive.

Q. So that the time you saw him prior to the founding meeting was earlier in the month?

A. Before the meeting.

Q. Some time between the 1st and the 10th of July, is that right?

A. Before the meeting.

Q. Well, yes. As I recall it, the clearest you could fix the ANMA meeting was the 10th or 11th of July?

A. I would say roughly around that time.

Q. And you saw Jencks a few days before that?

A. Yes.

Q. And both times it was in Albuquerque?

A. No.

Q. Oh, no?

A. The time before the founding convention of ANMA was in Santa Fe, New Mexico, at the Nest of the Owl ranch.

Q. What is the name of that ranch?

A. I believe it is "The Nest of the Owl."

Q. You are sure of that name?

A. I recall trying to pronounce the Mexican name for it. I am not sure of my pronounciation for it but I understand that was what it was in English.

Q. In any event, you are sure it had the word "owl" in it?

A. "El Nido del Tecolote", I believe that is the Spanish name for it.

Q. Who was present at this July meeting at this Nest of the Owl ranch?

A. It was Joseph DeSanti, and Frances DeSanti, Clinton Jencks, and I believe Alfred Montoya, and myself. There were others but I can't remember their names.

Q. But the only ones you can remember are the same four people who attended the May, 1949 meeting, is that right?

A. You mean the same people I remember there at the ranch meeting?

Q. What I am getting at is that the four people you just named as having attended this July meeting at the ranch of the owl, or the nest of the owl, were the DeSantis, Jencks, Montoya, and Ford?

A. That is right.

Q. And these are the same people that you mentioned as present at all of these other meetings, isn't that right?

A. That is right.

Q. And you just can't remember the names of anybody else at these meetings, is that right?

A. No, I can't remember them.

Q. Now, did you give a report to the F. B. I. on this July meeting at the Nest of the Owl?

A. I am sure I did.

Q. Was that a written report?

A. I don't recall.

Q. What is your best recollection as to whether it was written or oral?

A. My best recollection is that I don't know.

Q. You just have no recollection at all, have you?

A. That is right.

Q. Did you discuss this question of your F. B. I. reports with any of the prosecutors before you took the stand?

A. Did I discuss the questions?

Q. The question of your F. B. I. reports?

A. No, I discussed the case.

Q. Did anybody suggest to you that you answer here that you don't remember whether your F. B. I. reports were oral or in writing?

A. No.

Q. Before you took the stand here were you given a sheet of paper on which there were questions and answers written out?

A. No.

Q. Were you shown a sheet of paper on which the questions and answers were written out?

A. I was not.

Q. Weren't you told that your counsel would examine you from a sheet of paper containing questions and answers?

A. No.

Q. Well, you know in fact that he did, don't you?

A. I wasn't even looking at my counsel.

Q. Now, other than these two occasions in July of 1949 when you say you met with Jencks, did you meet with him on any other occasions in July of 1949?

A. No, I don't recall.

Q. Did you meet with him in the following month, August of '49?

A. I don't recall.

Q. Did you meet with him in the following month of September, 1949?

A. I don't believe so.

Q. October, '49?

A. I don't believe so.

Q. November, '49?

A. No.

Q. December, '49?

A. I don't believe so.

Q. January, 1950?

A. I had numerous meetings and I don't recall specific ones here in these various months.

Q. Well, I recall on direct examination you said that you couldn't remember any other meetings with Jencks after August of '49. Do you remember testifying to that?

A. After August?

Q. Yes?

A. Of '49?

Q. Yes?

A. August of '49, I don't recall that.

Q. You don't recall what you said this morning on direct?

A. I will have to refresh my memory.

Q. Well, I have attempted to in my question just preceding this one. According to my notes you said, "I recall no other meeting after that time", and "that time" referring to August, '49?

A. I would say that that would be correct.

Q. That means no meetings with Jencks after August, '49?

A. Yes.

Q. At all?

A. Not that I recall.

Q. You know of anything that could assist or refresh your recollection on that subject?

A. No.

Q. Now, do you recall what you said—withdraw that. Don't you have any F. B. I. reports that you could consult to refresh your recollection as to whether you met with Jencks any time after August, '49?

A. I have never seen any.

Q. Have you asked to look at your F. B. I. reports to refresh your recollection?

A. No.

Q. Do you recall what you said on direct examination as to the dates on which you saw Mr. Jencks at the Nest of the Owl and at the ANMA meeting?

A. I think so.

Q. What did you say as to the dates on your direct examination?

A. On the ANMA meeting I think it was somewhere around July or August of '49.

Q. Is that what you said on your direct examination?

A. I believe so.

Q. You don't remember?

A. I am not positive exactly, but I think I am correct.

Q. Do you recall that you placed the meeting at the Nest of the Owl in August of 1949 on your direct examination?

A. What I attempted to do—

Q. Do you recall that or don't you?

A. I recall that if I said the meeting—

Q. Do you recall what you said here, specifically the question, do you recall saying on direct examination that the meeting with Jencks at the Nest of the Owl was in August of '49; will you answer that "yes" or "no"?

A. I can't answer that "yes" or "no" unless I can explain.

The Court:

All right, but you answer it first, as to whether or not you testified that on your direct examination.

A. I will say "no" with this explanation: That I meant that there were two meetings around the same period, the meeting of the founding convention and ANMA and the meeting with Jencks and others just prior to that meeting, and if I said July or August I meant in that sequence.

Q. Do you recall saying on your direct examination that the Anna meeting at Albuquerque was held in mid-August, 1949?

A. Well—

Q. Do you recall that, yes or no?

A. The same answer that I gave before would hold here.

Q. You can't remember what you said on direct?

A. Only as to sequence.

Q. Well, when you gave this explanation a minute ago were you trying to say that the meeting at the Nest of the Owl was in July and the meeting of the ANMA convention in Albuquerque was in August?

A. It could have been either in July or August.

Q. Well, do you remember testifying here a few minutes ago that the ANMA meeting was held on the 10th or 11th of July?

A. I recall that.

Q. But you with aw that now?

A. I don't withdraw that, but as I told you, I have difficulty remembering the exact dates. I do recall that it was either July or August.

Q. You have difficulty recollecting the month, don't you, Mr. Ford?

A. At times.

Q. And right now you are having difficulty?

A. Not much difficulty. I think July or August would be correct.

Q. And you can't remember whether you said on direct whether it was July or August, or July and August, or August alone, can you?

Mr. Williams:

Your Honor, don't you think you should protect this witness now and don't let this attorney browbeat him around about dates?

Mr. McTernan:

Do you consider that I am browbeating this witness, Your Honor?

The Court:
No.

Mr. McTernan:
Thank you, Your Honor.

The Court:
This is cross-examination. Go ahead.

Mr. McTernan:
May the question be read?

The Court:
The reporter will read the question.

(The reporter complied.)

A. I can remember that it was either in July or August.

Q. I am not asking that. I am asking if you can remember what you said on direct examination. Can you remember whether you said on direct that it was July or August, July and August, or August alone?

A. I believe I said July or August.

Q. Was it your practice when you submitted reports on the meetings you attended to give the date and the place of the meeting?

Mr. Alderman:
(To reporter) May I have that question again?

(The reporter repeated the question.)

Mr. Alderman:
I would like to object for the reason that the reports of the F. B. I. are not at all pertintent.

The Court:

He is not going into the report.

Mr. Alderman:

He is testifying solely on his own recollection, solely from memory, and I don't think it is material.

The Court:

He is not asking for secrets of the F. B. I. Objection overruled.

A. I don't remember the question.

(The reporter again read the question.)

A. It was my practice as near as possible.

Q. Well, at the times that you made those reports the place and the date and the persons present were all fresh in your mind, wren't they?

A. Yes.

Mr. Alderman:

Your Honor, I believe that same question was asked this morning.

The Court:

Objection overruled.

Q. And it was your practice in making those reports to name all the persons who were present, wasn't it?

A. Yes.

Q. Including the people you regarded as your friends?

A. Including all persons present.

Q. Including those whom you regarded as your friends?

The Court:

Well, he said including all those present. That would include friends and enemies, all those present.

Mr. McTernan:

No further questions. Could we approach the bench, Your Honor?

The Court:

Yes.

(At this point the attorneys for both sides approached the bench and conferred with the Court in low tones.)

The Court:

All right, both sides are through with this witness except the statement which the Court understands the District Attorney is going to furnish the defendant's counsel covering an itemized list of the money that's been paid by the F. B. I. to this witness?

Mr. Williams:

We are going to furnish it with certain agreement.

(Witness excused.)

Mr. Williams:

I understand you are not going to let them recall him for any examination?

The Court:

No, not just any examination. If there is something he hasn't already asked him he can ask him about that.

Mr. Williams:

I thought he was only going to recall him in regard to this statement.

The Court;

Well, that is the main thing, but if there is something else material the Court will permit it. The Court will exercise that degree of fairness to both sides, if something else comes up between now and tomorrow morning.

CLAY MARTIN BROOKS, a witness for the Government, having been duly sworn, in answer to questions propounded, testified as follows:

On Direct Examination.

Questions by Mr. Williams:

Q. What is your name, please?
A. Clay Martin Brooks.
Q. Where do you live, Mr. Brooks?
A. Silver Bell, Arizona.
Q. How long have you lived there?
A. About fourteen months.
Q. Where did you live just prior to living there?
A. Bayard, New Mexico.

The Court:

A little louder, please.

Q. How long did you live at Bayard?
A. From 1949 until I moved to Silver Bell.
Q. Through '49 and '50?

A. I moved to Silver Bell in October a year ago from Bayard.

Q. When you were at Bayard what was your business?

A. I was employed by the Isbell Construction Company.

Mr. McTernan:

I couldn't get that name.

The Court:

A little louder, Mr. Witness. They all have to hear you.

A. Isbell Construction Company.

Q. What was the nature of your work with that company?

A. I worked in the drill department as a tool dresser, driller, and mechanic.

Q. What are you doing now?

A. Drill Foreman.

Q. For whom?

A. Isbell Construction Company.

Q. Do you know the defendant in this case, Clinton Jencks?

A. Yes, I do.

Q. When and where did you first meet him, as best you know?

A. In the Spring of 1947 when I lived in Hanover, New Mexico.

Q. What was your business then?

A. I was working with Mr. E .R. Mathney, drilling for Mr. E. R. Mathney, contractor.

Mr. McTernan:

What was that name?

A. E. R. Mathney, Silver City.

The Court:

You mean drilling water wells or oil wells, or what?

The Witness:

Diamond drilling.

Q. Were you associated with Mr. Jencks during that summer of 1947?

A. Well, I saw him almost daily. I mean, I lived just across an alleyway from him. He lived in the Hanover project.

Q. He lived in the Hanover project?

A. Yes.

Q. A housing project?

A. Yes.

Q. And did you live there too?

A. Yes.

Q. Did you ever have any conversation with Mr. Jencks converning his membership in the Communist Party?

Mr. McTernan:

I object to this, Your Honor, on the ground it is remote and un-connected with any issue in this case.

The Court:

Overruled.

Mr. McTernan:

And we urge all the grounds that we urged the other day.

The Court:

All right.

A. Yes, I did.

Q. Was anyone else present at this conversation?

A. Yes, Mr. Irving Gladstone, U. S. Geologist from the U. S. Mining Company.

Q. As near as you can, set the time and place of this conversation you have in mind. Where were you, first?

A. In Hanover, at the housing project, and near my home, on the porch, platform type of porch. We were sitting talking—

Q. On the porch of your home?

A. Well, it is on the housing project, it is not mine, we were renting. I was renting from the housing project.

Q. Where you lived, I mean?

A. Yes, sir.

Q. And as near as you can, state what was said?

The Court:

He will have to give the approximate date as best he can remember.

The Witness:

It was in the Spring and I believe in May.

The Court:

What year?

The Witness:

1947.

Q. Now, as near as you can, state what each of you three, or any of you three said?

Mr. McTernan:

In view of the date, Your Honor, we renew our objection on all the grounds previously mentioned.

The Court:

Objection overruled.

A. We were gathered there discussing general topics, the job and things of a mixed nature, and Mr. Jencks' small son, he was three or four years of age, maybe older, I don't know, but he brought a card, a Mother's Day card, out to display and showed us the card; and Mr. Jencks admired it and turned to us and said that he couldn't think of anything more admirable in a child than loyalty to his mother. Mr. Gladstone spoke up. He said he didn't agree completely. He felt that a child should be taught to respect the laws of his country and his creator equally as much, and Mr. Jencks said he didn't believe in that kind of foolishness and didn't teach it to his children. I spoke up and said that that sounded to me like what I understood to be Communist beliefs. He said that he was a Communist and proud of it. He seemed rather indignant about the remarks so we changed the subject to more agreeable matters.

Q. Did you ever have any trouble with Mr. Jencks?

A. No, I haven't.

Mr. Williams:

You may have the witness.

Mr. McTernan:

May we approach the bench?

The Court:

Yes.

(Counsel for both sides approached the bench and conferred with the Court, in a low tone of voice, out of the hearing of the jury, as follows:)

Mr. McTernan:

If the Court please, we move to strike his testimony on the ground it is irrelevant and immaterial to any issue in this case and highly prejudicial. This witness' testimony does not go to membership in the Communist Party or any other organization. It does not go to affiliation with the Communist Party or any other organization. It goes to beliefs. The defendant is not on trial here for having falsely represented his beliefs. It is prejudicial in the sense that it raises matters of belief upon which feeling runs very deep in most communities. It is a denial of respect for the laws of God, and it is an attempt to drag in here by the heels a religious issue which has no place in this thing whatsover, and it just doesn't support any contention which the prosecution can reasonably urge in this case.

The Court:

Motion is overruled.

Mr. McTernan:

I have another motion. On the basis of his testimony and the Court's ruling—withdraw that. On the basis of his testimony we move for a mistrial.

The Court:

Motion is overruled.

Resuming before the jury:

The Court:

Any further examination of this witness?

Mr. McTernan:

On the basis of our objections as to the witness Currie, and without repeating all of the grounds as to the wit-

ness Currie, we ask for time to prepare our cross-examination of this witness and that his cross-examination be deferred without delaying the progress of the case.

The Court:

That motion and request is overruled and denied.

On Cross-Examination.

Questions by Mr. McTernan:

Q. Mr. Brooks, at the time you say you had this conversation with Mr. Jencks by whom were you employed?

A. By Mr. E. R. Mathney.

Q. Will you spell that name, please?

A. M-a-t-h-n-e-y.

Q. And were you employed by him personally or was it some company?

A. He is a contractor, a diamond drilling contractor.

Q. E. R. Mathney?

A. That is right.

Q. And at that time, in 1947, where was he located?

A. His office was in Silver City, New Mexico.

Q. And when did you move into the Hanover projects.

A. I moved there in November of '45.

Q. Are you sure of that?

A. Yes, sir.

Q. Are you still living there?

A. Am I still living there?

Q. Yes?

A. No.

Q. When did you move out of there?

A. Moved out of there in April of '49.

Q. And what was your address while you were there?

A. While I was at the project?

Q. At the project?

A. Turnerville. I received my mail at Turnerville.

Q. Well, did the housing accommodations which you occupied in the Hanover project have a number or name?

A. Oh, yes, I lived in two different apartments. The first one was 94. I moved from there to 98.

Q. Just No. 94, Hanover Project?

A. That was housing number, yes.

Q. And then No. 98?

A. Yes.

Q. How long did you live in No. 94?

A. I don't remember the exact number of months. We moved from there to the other house.

Q. Was it less than a year that you lived in No. 94?

A. I don't remember.

Q. When did you move into No. 98?

A. Well, I moved from 94 to 98 but I don't remember the exact date.

Q. Do you remember how long you lived in No. 98 in terms of months and years?

A. I lived there until I moved to Bayard.

Q. I understand, but can you recall in terms of months and years how long you lived in No. 98?

A. Well, if I knew the exact date I would figure the other one. I don't remember the exact date.

Q. Which of these units were you occupying when you had this conversation with Mr. Jencks?

A. The first one.

Q. Now, are you pretty clear in your mind that this conversation occurred in May of 1947?

A. Well, I am quite clear because Mr. Gladstone and I had been out practicing softball and we had just come back from the field and was still there in our sweat shirts sitting around there talking.

Q. That is how you remember it?

A. That is the way I remember it.

Q. You remember it because you had been playing softball that day?

A. Yes.

Q. Is that the only day you played softball?

A. No.

Q. You played it pretty regularly?

A. We had just started practicing.

Q. You had just started?

A. Yes.

Q. And that is how you remember, is that right?

A. Yes.

Q. I want to be sure I understand you on this. Is it your testimony that you definitely and clearly remember that this conversation took place in May, 1947?

A. I didn't say exactly. I didn't say in May. I said it was in the Spring and the best of my knowledge in May. We had just started out in Spring softball practice.

Q. That is what I want to get just as clear and precise as you can remember. If it wasn't in May, 1947, what month was it?

A. It was in 1947 in the Spring.

Q. Well, what months do you consider to be in the Spring?

A. Well, as near as I can remember it was in May.

Q. Well, does the term "Spring" in your mind include any month other than May?

A. Yes.

Q. What other month?

A. It would include part of April, May and June.

Q. So it was one of those, in one of those three months but you think it was in May, is that right?

A. Yes.

Q. That is the best recollection you have at this time?

A. Yes.

Q. Now, did you make any note or memorandum of this conversation at the time it was held?

A. You mean figuratively?

Q. No; after you had this conversation with Jencks did you go off and write it down anywhere?

A. No.

Q. Did you tell anybody about it?

A. Not at that particular time.

Q. Later did you tell anybody about it?

A. Yes, I did.

Q. When?

A. Oh, I don't recall the date exactly. Some time, let's see, some time last year. I believe it was in August.

Q. In August of '53?

A. Yes, sir.

Q. You hadn't mentioned this conversation to anybody between May of '47 to August of '53, is that right?

A. Not the particular incident, the particular thing. I mean, I just hadn't talked to anybody about it.

Q. That is what I want to be clear about. This conversation that you talked about in your direct examination, you hadn't mentioned it to anybody from May of 1947 to August of 1953, is that right?

A. Not that I recall.

Q. And your recollection is pretty clear on that, isn't it, Mr. Brooks?

A. It is clear, yes.

Q. To whom did you mention it in August of 1953?

A. To Mr. Smith.

Q. And who is Mr. Smith?

A. He is a resident of Bayard, New Mexico.

Q. And where does he work?

A. I believe he owns a business there.

Q. What business?

A. Service station.

Q. Is he the operator of the Union Oil station there?

A. He operates "66", I believe, "Phillips 66".

Q. "Phillips 66"; and where did you have this conversation with Mr. Smith?

A. In his home.

Q. And did he tell you at that time that he was looking for information with respect to Jencks?

A. No, he didn't.

Q. How did you happen to tell Mr. Smith about this conversation six years later?

A. Well, he mentioned the fact that, or the subject was brought up, they was having some discussion about a trial or something about Mr. Jencks, about whether or not he belonged to the Communist Party, and I told him of that occasion whenever he talked to me about it and thought no more about it.

Q. And you thought no more about it?

A. That is right, until I was sub-poenaed here.

Q. And after you talked to Mr. Smith about the conversation in August of '53 did you talk to anybody else?

A. Yes.

Q. Who did you talk to next?

A. Well, I was interviewed by a F. B. I. Agent.

Q. What was his name?

A. I don't recall exactly. I think his name was Pierce, I am not sure.

Q. And when did you talk to him?

A. He came to see me after I had moved to Silver Bell.

Q. And when was that?

A. I moved to Silver Bell in October of '52.

Q. And was it in October of '52?

A. No, it was afterwards.

Q. You mean October of '53?

A. Well—

Q. Well, let's get it this way, he talked to you after you talked to Mr. Smith, didn't he?

A. Yes.

Q. Do you recall the month?

A. I don't know exactly, no.

Q. Well, approximately, to the best of your recollection?

A. Oh, comparatively recently, probably three or four months. I am not sure of the exact date.

Q. Three or four months ago?

A. Yes.

Q. That would put it sometime around October of '53, isn't that right?

A. Somewhere around the fall. I don't remember the exact date.

Q. And did Mr. Pierce tell you how he happened to find out about you and what you knew?

A. No; he didn't.

Q. Now, had Jencks been living in the Hanover project for some time before you had this conversation with him back there in May of '47?

A. I don't believe so. I don't believe he had been there very long.

Q. Well, how long, about?

A. Well, he had fairly recently moved in. I don't know how long he had been there.

Q. Well, was it a couple of months, or four months, or six months?

A. No, it wasn't that long.

Q. Well, how long?

A. I said very recently. I don't know exactly how long. I don't know the date he moved in.

Q. Have you got any recollection as to the passage of time between the time he moved in there and the time you had this conversation with him?

A. Well, I don't know exactly when he did move in. He hadn't been there very long.

Q. Well, was it one week, one month, two months; what was it?

A. I don't know.

Q. Now, you do know that it wasn't the day he moved in?

A. I don't know. I don't remember the exact date he moved in. I don't have that information.

Q. Now, is the Hanover project near Silver City?

A. It is about twelve miles from Silver, I believe.

Q. Do you know whether Jencks had lived in that area before moving into the Hanover projects?

A. I don't know. I know he did move from the Hanover project to the Silver City area.

Q. Don't you know that he lived in Silver City before he moved into the Hanover project?

A. No, I don't.

Q. He didn't tell you that?

A. No.

Q. Don't you know that he had lived in a motor Court in Silver City before moving into the Hanover project?

A. No, I didn't know that.

Q. Did you ever hear of the "Ideal Tourist Court"?

A. Have I heard of it?

Q. Yes?

A. I don't know exactly where it is, no, sir.

Q. Did you ever hear of a man named Seth Larson in Silver City?

A. I knew a man by the name of Larson who is manager of the Penney stores.

Q. How big a city is Silver City?

A. Oh, five thousand.

Q. It was less back there in '47, wasn't it?

A. I don't know the exact figure.

Q. Do you know whether Mr. Jencks lived in the Ideal Tourist Court in Silver City in April, May, and June of 1947?

A. No.

Q. Do you know whether Mr. Jencks lived in a house in Silver City before moving into the Hanover project?

A. No. I don't know whether he did or not.

Q. Didn't Jencks tell you about where he had lived before he came to the Hanover propect?

A. No, he didn't.

Q. How many conversations did you have with Jencks while you and he lived in the same project?

A. Oh, not any lengthy conversations. I talked to him on several different occasions, passed the time of day, and spoke to him I don't remember how many times.

Q. Four or five?

A. Possibly.

Q. Did you have any conversation with him after this one you told us on your direct examination?

A. Not any lengthy conversation, no.

Q. You had some, is that right?

A. I spoke to him at times.

Q. Didn't Jencks tell you that he and his family had moved down to Silver City from Denver in April of 1947?

A. No, he didn't.

Q. Did he tell you that the first place he lived in, in that area, was the Ideal Tourist Court?

A. No, sir.

Q. Have you ever seen a Silver City directory?

A. Yes, I have.

Q. For the year 1947?

A. I probably did. I wouldn't want to say exactly.

Q. Do you recall seeing in the Silver City directory in 1947 an entry for Clinton E. Jencks as the owner of a home there?

A. No.

Mr. McTernan:

Your Honor, in order to complete the cross-examination of this witness we need access to certain documents which we don't have readily available because we couldn't anticipate his testimony.

The Court:

The Court will let you recall him later if it is necessary.

Mr. McTernan:

I think we will have to suspend cross-examination of this witness until we can get those documents.

The Court:

All right.

(Witness excused.)

The Court:

Now then, the next witness will probably be a long witness so we won't start that. The Court is informed that the witness, Mr. Arthur Flores, wants to be excused if he is not going to be used now. On yesterday the District Attorney announced that he was here and present and that you were not going to use him and were willing to excuse him, but Mr. Elfers stated not to excuse him at that time, so what is the situation now as to the witness, Arthur Flores? He is here and in the witness room, available to anybody who wants to use him.

Mr. Williams:

We don't propose to use him on direct testimony. It is possible that something could come up and we might want to recall him. That is all I care, just to have him available somewhere.

Mr. McTernan:

He is not our witness and not under our subpoena.

The Court:

Well, if he is wanted by anybody he will promptly return.

Mr. Williams:

That is all I ask.

The Court:

On that basis the Court is willing to excuse him, on the condition that he does return if he is wanted here as a witness by anybody, by either side or the Court.

Mr. McTernan:

I would like to state to the Court that as far as the rest of the day is concerned we are ready to go ahead.

The Court:

We can't go very far.

Mr. Williams:

If they will state, any of them, what the records of this tourist court is going to show I think we will have no objection to this and continue.

Mr. McTernan:

Well, if I had the records, Your Honor, I could go ahead.

The Court:

Well, you will probably have that, or stipulate to that, in the morning, and if you want to cross-examine the witness further you are privileged to do so.

Mr. McTernan:

Thank you, Your Honor. We can go ahead on this financial matter.

The Court:

All right.

Mr. McTernan:

I want it clear that I object or will object to Government's counsel reading from documents which he intends for me to accept in lieu of the record itself. I submit that before anything is read into the record that this jury is entitled to see it.

The Court:

Is this about the itemized statement of money that the F. B. I. paid the witness Ford?

Mr. McTernan:

Yes, Your Honor.

Mr. Herring:

May I state, for purposes of clarification, that I was served with a subpoena duces tecum requiring me to produce certain documents. Mr. McTernan indicated he didn't want to discuss the matter in front of the jury. Maybe the Court would like to excuse the jury and we will take it up right now.

The Court:

Gentlemen of the jury, you are now excused until tomorrow morning at 9:30 A. M.

(Whereupon the jury retired from the Courtroom.)

Mr. Williams:

Your Honor, will you tell the Marshal to tell Mr. Flores when he excuses him to be available here or at Bayard, New Mexico, with the union?

The Court:

(To Marshal) You will excuse Mr. Flores on that condition, and also take his address and telephone number to find out where he will be reached, and he is excused on the condition that he promptly return here if advised to do so by the Court or any officer of the Court, or any other lawyer.

Mr. Williams:

And not to discuss the case with anybody.

The Court:

Yes, and not to discuss the case at all. Now, what is this other matter? The Court will hear you.

Mr. Herring:

During the recess this afternoon, Your Honor, Mr. Ternan served me with a subpoena duces tecum to produce all records pertaining to payments to Ford, the witness who was on the stand during the afternoon, covering the years 1948, 1949, 1950, 1951, 1952, 1953 and 1954, including all vouchers, receipts, and so forth, concerning payments made by the Department of Justice for services rendered, for giving reports and testimony.

In other words, he is seeking by this subpoena duces tecum to require me to produce confidential information of the Federal Bureau of Investigation since the testimony here shows that he received no payments from anybody except the F. B. I. I am willing, in lieu of this subpoena, to furnish to Mr. McTernan the annual amounts paid for services and expenses, and totals for the years that I have any information on, and this information is true and correct according to that furnished me by the Federal Bureau of Investigation.

The Court:
Will you pass it to opposing counsel?

Mr. Herring:
I am not agreeing to introduce or give him any reports of the F. B. I. or waiving any rights to object. (Hands document to Mr. McTernan)

Mr. McTernan:
Well, Your Honor, I have taken the piece of paper that he has proferred me, but I want it understood that in accepting it I am not waiving my rights.

Mr. Herring:
You may accept that as the figures given to me by the F. B. I. as payments given to J. W. Ford by the F. B. I. in Los Angeles, California.

The Court:
Well, suppose we let the record show that the District Attorney has passed it to counsel for the defense as per the statemnt he just made, and counsel for the defense can look it over, check it over this evening. If they want to use it tomorrow morning they are at liber-

ty to do so, or if they want to make some objection, to it or complaint about it, why, the Court will hear you.

Mr. McTernan:
May I suggest that if there is some problem about this matter, that we can take it up with the Court before the jury is brought in.

The Court:
(To Mr. Herring) Does the statement contain an itemized list of all the money paid?

Mr. Herring:
It gives a statement as to the years, the amount for each year, not by months or days, or by any particular payment. I do not have the vouchers which he is talking about, never seen or heard of them.

The Court:
But that, according to the information furnished by the F. B. I. is a complete and itemized statement of the monies paid by the F. B. I.?

Mr. Herring:
Not complete as to the months, or weeks, or individual payments.

Mr. Williams:
Would you like to see it, Judge?

(The document was then shown to the Court.)

The Court:
All right, gentlemen, if there is any objection about it, or you want to be heard on it, you will please advise

the Court or his Secretary at 9:15 in the morning before the jury reports.

Mr. McTernan:

One thing occurs to me. I just want to mention it to Your Honor and then you can think about it while we are thinking about it. We don't have any assurance from anybody who claims to be in a position to know that these figures are complete and accurate. All we have in response to a subpoena is a hearsay statement from Mr. Herring. I think we are entitled, the way we look at it, to some definite assurance from somebody in the Department of Justice who is in a position to know that these figures are complete and accurate.

Mr. Herring:

Your Honor, he subpoenaed me. At least, my name appears on the subpoena. I furnished him the information the best way I could. If it is not satisfactory I suggest he take other steps to get it. That is all I have, and as far as I know it is true and correct.

The Court:

And you obtained it from the F. B. I.?

Mr. Herring:

Yes, sir.

The Court:

And they represented to you that it was a full statement of all the monies paid?

Mr. Herring:

That is correct.

The Court:

All right, if you have any objections about it you will advise the Court or his secretary at 9:15 in the morning.

A recess was taken at 5:00 o'clock P. M., and upon reconvening at 9:30 o'clock A. M., January 14, 1954, proceedings were resumed as follows:

The Court:

You may proceed.

Mr. Williams:

We are just wondering whose move it is. I believe this matter about the payments to the witness Ford was being discussed, was it not, and we have a stipulation here, which I would like for them to sign, if they will, or whatever they want to do.

The Court:

If you think you can agree on that.

Mr. Williams:

They are considering it now. We just prepared it.

(At this point two instruments were marked "G-23" and "G-23A", respectively.)

Mr. Williams:

Your Honor, we offer Government's Exhibits 23 and 23-A, which are self-explanatory and serve in connection with each other.

The Court:

Is it a stipulation, or at least there is no objection to it?

Mr. McTernan:
It is a stipulation.

Mr. Williams:
It is signed by both parties.

The Court:
You want to offer it at this time?

Mr. Williams:
We do offer it.

The Court:
Well, it is admitted.

Government's Exhibit 23, having been received in evidence, reads in words and figures as follows:

"G-23"

In the United States District Court for the Western District of Texas, El Paso Division.

United States of America,
vs. No. 54013 Criminal
Clinton E. Jencks.

Stipulation.

The defendant herein has caused to be issued and served on Charles F. Herring, United States Attorney for the Western District of Texas, a subpoena duces tecum requiring the production of certain vouchers, receipts, and other records reflecting payments made by

the Department of Justice or any other Government Agency to Jerry Wilburn Ford, a witness for the prosecution in the above case.

In lieu of the production of such records, the prosecution has supplied to the defendant, through his attorney, in open Court, certain data concerning payments to this witness. The prosecution represents that such data heretofore furnished accurately states the facts concerning all payments made up to and including January 1, 1954. It does not include any payments to which Ford may be entitled by virtue of his having been subpoenaed in this case, for which he will be paid the regular travel and per diem, as required by law.

It is further stipulated that, if the appropriate officer of the Federal Bureau of Investigation were to produce the records of the Bureau described in the subpoena and was called and sworn as a witness for the defendant in this trial, he would testify that the Federal Bureau of Investigation has paid to the witness for the prosecution the sums set out in the statement furnished to defendant in open Court on January 13, 1954, and that such payments were made for services performed and expenses incurred by such witness in furnishing information to the Federal Bureau of Investigation concerning the Communist Party, or its activities or members.

Nothing herein contained shall be construed as an admission on the part of the prosecution of the defendant's right to offer such evidence, or to obtain it by virtue of subpoena, and this information is furnished in lieu of the subpoena.

Dated this 14th day of January, 1954, at El Paso, Texas.

(S.) CHARLES F. HERRING,
(Charles F. Herring),
United States Attorney,
(S.) JOHN T. McTERNAN,
(John T. McTernan),
Attorney for Defendant.

Government's Exhibit 23-A, having been received in evidence, reads in words and figures as follows:

"G-23-A."

Year	Services	Expenses	Total
1948	$ 350.00	$ 58.06	$ 408.06
1949	1,475.00	138.67	1,613.67
1950	1,500.00	25.00	1,525.00
1951	1,950.00	207.00	2,157.00
1952	1,250.00	25.00	1,275.00
1953	500.00	13.00	513.00
Grand Total	$ 7,025.00	$ 466.73	$ 7,491.73
Grand Total	$ 7,025.00	$ 466.73	$7,491.73

Received in open Court on January 13, 1954 in lieu of documents described in subpoena served upon Charles F. Herring, Esq. on the same date.

(S.) JOHN T. McTERNAN.

The Court:

You want to read it to the jury?

Mr. McTernan:

We would rather use it when it comes to cross-examining the witness.

The Court:

All right. Any further examination of these witnesses?

Mr. McTernan:

There will be. We would like to defer it a little longer. We received information by telephone last night and we would like to verify same. We ought to hear on it within a reasonable time. We also received advise as to the records in Silver City with reference to the testimony of the witness, Brooks. We dispatched a man to Silver City after we finished in Court yesterday and he ought to be back in Court today.

Mr. Williams:

Are they ready to proceed with Mr. Ford? We surely object to putting all of our evidence in and then turning them loose on anything they want.

The Court:

The Court is willing to give the defense a little more time because they were in effect surprise witnesses. The Court will permit counsel to defer cross-examination of those two witnesses until two o'clock today. Call the next witness.

GEORGE KNOTT, a witness for the Government, having been duly sworn, in answer to questions propounded, testified as follows:

On Direct Examination.

Questions by Mr. Broaddus:

Q. Would you state your name, please, sir?

A. George Knott.

Q. Where do you live at the present time, Mr. Knott?

A. Clarksburg, New Jersey.

Q. At the present time are you a member of the Communist Party?

A. No, I am not.

Q. Mr. Knott, have you ever been a member of the Communist Party?

A. Yes, I was, from 1936 until 1947.

Q. Directing your attention to approximately 1946 and 1947, you stated you were a member of the Communist Party at that time?

A. Yes, that is right.

Q. During that same period of time what occupation were you engaged in, if any?

A. I was working as International Representative and acting as Regional Director in the Southwest area of the United States. That covered the states of New Mexico, Texas and Arizona.

Q. For what organization were you Regional Director?

A. For the International Union of Mine, Mill and Smelter Workers.

Q. Commonly known as Mine-Mill?

A. That is right.

Q. Did your capacity in your job include the Bayard and Silver City, New Mexico area?

A. Yes, it did.

Q. Directing your attention to the latter part of 1946 and early 1947, I will ask you whether or not you were engaged in any Communist Party activities in the Bayard, and Silver City, New Mexico area?

Mr. McTernan:

I object to this as calling for an opinion and conclusion.

The Court:

Yes, objection sustained. Let him state what he did.

Q. In the latter part of 1946 and the early part of 1947, will you state to the jury what you did in the Silver City-Bayard, New Mexico area, if you did anything in that area?

Mr. McTernan:

May this be tied down to time and place? It covers a period of a year. Could we have it a little more definitely?

The Court:

Yes, get it down to a little more definite time, not within a year, but if he knows what month.

Q. Have you ever done any work in the Bayard-Silver City, New Mexico area?

A. Yes, I have.

Q. Have you done it on many occasions or on one occasion only?

A. Many occasions.

Q. Can you recall any specific times or years when you did any work there?

A. The last time I did any work in the Bayard-Silver City, New Mexico area would be in the latter part of 1946.

Q. Can you tie it down any more specifically than that?

A. Only to the extent of saying that it may have been around October. That is as close as I can get to it.

Q. From October to December of that year?

A. It may have been a month before or a month after that.

Q. That is as specific as you can get it?

A. That is right.

Q. What did you do then in that area?

A. It was my duty in that particular time to contact the Mine-Mill locals in the Silver City and Bayard, New Mexico area to lay the groundwork amongst those locals to hire Clinton Jencks as business agent. I met with various people in the Silver City area and with some members of the Executive Boards of the various locals, where I raised this question, and subseqently this was carried back to the locals and received their approval.

Q. And was anyone hired as business agent for the locals in the Silver City-Bayard, New Mexico area?

A. Yes, Clinton Jencks.

Q. Clinton Jencks, the defendant in this case?

A. That is correct.

Q. Do you know the defendant in this case?

A. Yes, I do.

Q. Would you point him out, please?

A. The man at the end of the table there. (indicating).

Q. When is the first time that you personally met Mr. Jencks?

A. Well, that would have been about the latter part of 1946, possibly the first part of 1947, but I think the latter part of 1946.

Q. Subsequent in time to the time that you went to Silver City?

Mr. McTernan:

I object on the ground it is leading and suggestive.

The Court:

Don't lead him.

Q. Was it before or afterwards the event you testified to?

A. Afterwards.

Q. At the time you went to the Silver City-Bayard, New Mexico area, state whether or not to your knowledge Clinton Jencks was a member of the Communist Party?

Mr. McTernan:

I object to this as calling for an opinion and conclusion.

The Court:

Objection overruled, if he knows.

A. Yes.

Q. Where was this meeting held where you first met the defendant, Clinton E. Jencks?

Mr. McTernan:

Just a moment. First, Your Honor, we would like to make an objection to any testimony concerning Clinton E. Jencks and the Communist Party in the year 1946 for the reasons already urged. We object to this question on the ground it is leading and assumes facts not in evidence.

The Court:

Objection overruled.

Q. Where did you first meet Clinton E. Jencks?

A. I met Clinton Jencks at the union hall in Bavard, New Mexico as the result of a meeting that had been arranged by Orville Larson.

Mr. McTernan:
We move to strike that.

The Court:
Yes, just state where you met him.

Q. Do you know these facts of your own knowledge, Mr. Knott?
A. Yes, I do.

Mr. Broaddus:
He is testifying from his own knowledge about a meeting.

The Court:
You can ask him anything he knows about the meeting, especially if Jencks was present.

Q. Well, was Clinton E. Jencks present at a meeting where you met him?
A. Yes, he was.
Q. Who else was present?
A. Arville Larson and Morris Graham.
Q. And this took place where?
A. In the union hall at Bayard, New Mexico.
Q. And as best you can, tell us the date of this meeting?
A. That would have been in the latter part of '46.
Q. And if you know, tell us who arranged this meeting?

Mr. McTernan:
I object to this on the ground it calls for an opinion and conclusion.

Q. I will re-phrase the question. Do you know of your own knowledge who arranged the meeting?

A. Yes, I do.

Q. Will you tell us who it was?

Mr. McTernan:

We object to this, Your Honor. The fact that he knows an opinion and conclusion doesn't make it any more competent.

The Court:

Yes, the Court agrees with counsel. Objection sustained.

Q. Was anyone present at this meeting besides the four men that you named?

A. Yes.

Q. Who was that?

A. The wife of the defendant Jencks.

Q. Did she stay there the entire time?

A. No, after the introductions were made Mrs. Jencks left.

Q. At that time you were a member of the Communist Party?

A. I was.

Q. And what was your capacity at that meeting?

Mr. McTernan:

I object to this on the ground it calls for an opinion and conclusion.

The Court:

If he knows, the Court will permit him to answer.

A. I was there in the capacity of a Communist and International Representative for Mine-Mill.

Q. And who is Orville Larson, or who was he at that time, what was his position?

A. He was the elected board member for the Southwest with Mine-Mill. He was my immediate superior.

Q. Who was Morris Graham at the time of this meeting?

A. Morris Graham was the Communist Party organizer with headquarters in Phoenix, covering the state of Arizona and southern New Mexico.

Q. Did Morris Graham have any official connection with Mine-Mill union at that time?

A. He had no official connection.

Q. If you will, please state as best you can what was said by whom and what was replied by whom during that meeting?

A. Well, that was my first meeting with Clinton Jencks. I shook his hand, told him that I was very glad that he was in the area, that I was sure now that the Silver City area would be under good control and would have organizational assistance. Mr. Larson also greeted him, told him that he was glad to see him again, and also made remarks to the extent that he too was glad that he was in the area. Morris Graham also shook his hand and said he was glad to meet him. Subsequently—

Q. Excuse me. Did the defendant reply anything to these statements made by you and Mr. Larson and Morris Graham?

A. Yes, the defendant acknowledged my handshake with him and said that he would do the best he could in the Silver City area.

Q. What further was said?

A. We then got down to the problem of looking at the organization picture in the area.

Q. Excuse me just a moment. Were you familiar with the organizational situation in that area?

A. Yes, I was.

Q. Were you familiar with the Communist Party situation in that area?

A. Yes, I was.

Q. Do you know whether there was an organized party in that area prior to that time?

A. So far as I know there were no members in that area.

Q. And what was the Mine-Mill situation, union situation, prior to that time?

A. The Mine-Mill situation prior to that time was that most of the mines, Mills, and smelters were organized but were not too strong.

Q. All right; if you will, now go back to the conversation that I interrupted?

A. After the greetings were over we sat down and discussed the organization situation. Certain weaknesses were pointed out as to what might be done to strengthen the Mine-Mill locals.

Q. Who pointed this out?

A. Both Larson and myself, and Morris Graham. The question was raised I believe by myself that one of the things that would have to be done in order to strengthen the situation here was to put a solid Communist Party group in each of the local unions of the Silver City area. Morris Graham agreed with this and said that it was necessary that this be done because in the event anything subsequently happened that Mr. Jencks would be transferred or would leave the area that leadership would be there ready to take over the local unions and carry them along on the same lines.

Q. Did Mr. Graham say what type of leadership?

A. Communist leadership.

Q. And did the defendant Jencks reply anything to your conversation and your statement and Mr. Graham's statement?

A. Yes, Clinton said that he was already aware of this problem and was already taking steps to correct it; that he anticipated getting out a monthly bulletin to raise the educational level and consciousness of the workers in the area, and that he also planned to amalgamate these locals over a period of time into one large local so they would be in closer control and supervision.

Q. Was anything further said and done at that meeting?

A. I think the last thing that was discussed there was the question of Party dues.

Q. Who discussed that in particular?

A. This was discussed by Morris Graham, who pointed out to Mr. Jencks that his dues would be paid now to the Phoenix office of the Communist Party, and that in the future if there were any other members in the area, these members would have their dues paid in the same way until such time as a large enough group would be organized for the Communist Party in the Silver City-Bayard, New Mexico area, after which other arrangements would be made.

Q. Do you recall any further conversation during this meeting by any of the participants?

A. No, I don't.

Q. One last question, Mr. Knott. Are you familiar with the "Daily People's World"?

A. Yes.

Q. Do you know what that is?

A. It is the Communist newspaper printed on the west coast, the counterpart of the "Daily Worker."

Q. And where is the "Daily Worker" printed?

A. In New York.

Mr. Boaddus:
You may have the witness.

Mr. McTernan:
Your Honor, for all the reasons we have urged to you many times before, we ask the Court for time to prepare cross-examination of this witness. He came here from New Jersey. We had no knowledge he was coming. It deals with a time long prior to that specified in the indictment. We couldn't possibly be ready for him, and we are not in a position to go into his cross-examination at this time.

The Court:
That motion is overruled.

Mr. Broaddus:
For the record we would like to state that a subpoena for Mr. Knott has been issued for some time, and on examination of the jury counsel for the defense asked them whether or not they were acquainted with George Knott, this witness.

The Court:
Motion overruled.

On Cross-Examination.

Questions by Mr. McTernan:
Q. What is your full name?
A. George Francis Knott.
Q. And what is your address?
A. Clarksburg, New Jersey.
Q. What is your street address?

A. There isn't any street address. That is a rural route.

Q. And near what large city is Clarksburg, New Jersey?

A. I think it would be closest to Freehold, New Jersey.

Q. And how long have you lived there?

A. Approximately two years.

Q. What is your occupation at the present time?

A. I function as a commission buyer.

Q. In what line of trade?

A. A commission buyer buys any particular commodity any person may request and sells it to them at a discount.

Q. And are you enaged in that work in Clarksburg, New Jersey?

A. Yes, that is right.

Q. You work in any other cities besides Clarksburg, New Jersey?

A. I cover the entire United States.

Q. Are you associated with anybody else in this business?

A. My sons.

Q. Anybody else?

A. That is all.

Q. How long have you been engaged in this business?

A. Approximately two months.

Q. And what did you do before that?

A. Well, before that I worked as an organizer for the Government and Civic Workers, CIO.

Q. Is that the name of the union, the Government and Civic Workers?

A. I think the present name is the Government and Civic Employees Organizing Committee.

Q. And how long were you connected with that organizing committee?

A. Approximately a year and three months.

Q. And before that what did you do?

A. Before that I was with the United Gas, Coke, and Chemical Workers, CIO.

Q. How long were you with them?

A. About a year and three quarters.

Q. And before that?

A. Before that I would have been, I guess, with the Mine, Mill and Smelter Workers.

Q. Do you remember, Mr. Knott, or are you guessing?

A. No—wait a minute, I did. I worked for a book concern in between there.

Q. What was the name of the book concern?

A. I am sorry, I no longer remember.

Q. Do you remember how long you were with them?

A. A short period of time, very short period. I think probably two or three weeks.

Q. And before the book concern, Mine-Mill?

A. That is right.

Q. How long were you with Mine-Mill?

A. From the early part of 1942 until about the middle of 1949.

Q. And were you in the capacity of International Representative all of that time?

A. With Mine-Mill?

Q. Yes?

A. No, most of the time I spent with Mine-Mill was in the capacity of Regional Director.

Q. And Regional Director in what area?

A. At times in the Southwest area, the Coeur d'Alenes area, and the Los Angeles area, Southern California area.

Q. And the Coeur d'Alene area, is that Idaho and Eastern Washington?

A. Yes, that is right.

Q. And the Los Angeles and Southern California area includes only areas in the state of California?

A. Yes, that is right.

Q. You left Mine-Mill sometime in 1947, is that right?

A. I left Mine-Mill sometime in 1949.

Q. 1949. What part of the year?

A. I think it would have been around May; April or May.

Q. And where were you working at that time?

A. In Salt Lake City, Utah.

Q. In what capacity?

A. As a representative for the Mine, Mill and Smelter Workers.

Q. How long had you been in Salt Lake as a representative of Mine-Mill?

A. I think for just about a year.

Q. And that was as International Representative?

A. That is right.

Q. Now, when you left Mine-Mill were you discharged or did you resign?

A. Ostensibly I was laid off.

Q. Actually, you were discharged, isn't that right?

A. The only thing I can tell you, sir, is what they told me.

They said they were laying me off for reasons of economy.

Q. At or before the time that you were "laid off for reasons of economy" were there not complaints of conduct in office?

A. I don't know that. They never came to me if there were.

Q. No complaints ever came to you?

A. No.

Q. Do you know who the secretary and treasurer of the union was at that time?

A. Yes.

Q. Mr. Travis?

A. That is right.

Q. Did he not make complaints to you of your conduct while in office?

A. The only complaint that Maurice Travis made to me was because of my audacity in running for International President of Mine, Mill and Smelter Workers.

Q. He complained to you about drunkenness in your office, didn't he?

A. I have never been drunk, sir.

Q. He complained to you also about gambling, did he not?

A. No, he did not.

Q. Is it your testimony that there were no complaints from any international officer about drunkenness and gambling on your part before you were "laid off"?

A. That is quite correct. I have never been drunk.

Q. Give us the time period when you say you were Regional Director in the Southwest area?

A. First time I was in the Southwest area would have been from the early part or late part of January, 1942, until approximately the latter part of 1942, that would have been in October. That was in the Silver City area; and then I left there, went to the Arizona area, and spent, I think, approximately a year or a year and a half in that area.

Q. From about October, '42, to sometime in March of '44?

A. Yes. I can't give you the exact dates. To the best of my knowledge, it would be somewhere in the latter part of '43, or early part of '44.

Q. After that where were you? This is all Southwest?

A. That is right. Let me see, subsequently I was sent to take charge of the Remington Arms campaign in Denver, Colorado. That would be in another district, District One.

Q. Then when did you come back into the Southwest District?

A. I did not come back into the Southwest District thereafter until the latter part of 1946.

Q. Well, can you give us the month in '46 when you came back?

A. No, I couldn't sir.

Q. Well, this meeting that you had with Mr. Jencks, was that in October of '46?

A. I don't know, sir. To the best of my memory, it was in the latter part of 1946.

Q. Well, at the time—You remember the conversation I am talking about, now, the meeting that you said you had with Jencks and Larson and Graham, where Mrs. Jencks was introduced and then left?

A. Yes.

Q. Now, were you Regional Director of the Southwest area at the time of that meeting?

A. Yes, I was.

Q. Were you stationed somewhere in the Southwest?

A. Yes, I was.

Q. And where were you stationed at that time?

A. At Globe, Arizona.

Q. And can you remember the month when you were first stationed at Globe, Arizona, in connection with that assignment?

A. No, I can't, sir. I left the Coeur d'Alenes, I remember, just about at the onset of cold weather. That would have been somewhere in the months of September or October, that is, to the best of my knowledge.

Q. Well, is that the nearest you can figure the time when you undertook your duties as Regional Director in 1946?

A. Yes, that is right.

Q. September or October of '46?

A. Yes.

Q. How long did you hold the position that time?

A. In the Southwest area at that particular time?

Q. Yes?

A. That would have been 'til sometime around November of 1947.

Q. Now, as a Regional Director were you on the payroll of the national office?

A. Of the Mine, Mill, and Smelter Workers?

Q. Yes, and the national office was in Denver at that time?

A. No. If my memory serves me correctly, they were in Chicago, I believe.

Q. In Chicago?

A. Yes.

Q. And you were paid your salary by a check issued from Chicago?

A. That is right.

Q. And, in addition to your compensation for salary, you were also paid expense money, were you not?

A. That is right.

Q. And the checks of the expense money were issued from the national office in Chicago also, isn't that right?

A. That is right.

Q. These were issued against travel reports or vouchers that you made up, isn't that right?

A. That is right.

Q. And did you make them up periodically?

A. That is right. Twice each month, I believe.

Q. And with each report you detailed the travel you had undertaken for the union in the course of your duties for the preceding two-month period, isn't that right?

A. That is right.

Q. I mean two-week period, excuse me.

A. Yes.

Q. Now, these—am I correct in calling them expense vouchers? Is that what they were called when you were with the union?

A. To the best of my knowledge, yes.

Q. These expense vouchers that you submitted each two weeks covered not only travel but other expenses which the union office would recognize as reimburseable expenses, is that right?

A. That is right.

Q. And the purpose of filling out these vouchers was to give an itemization of these things so the union auditors could look them over and pay them if they were in accordance with the union rules, isn't that right?

A. That is right.

Q. And it was your practice, was it not, to claim reimbursement for the travel that you engaged in, in the course of your duties?

A. That is right. I would like to explain that, however, by saying that at different periods the international union would have different rules. For instance, at one time they said, "Well, mileage will be so much but the maximum that you can get no matter how far you go will be so much. At other times that law wasn't in effect. They changed at different times, and I don't know what was in effect at this period.

Q. In any event, the union rules required you to specify each two weeks the travel that you were engaged in?

A. Yes.

Q. And whether you were paid everything that you should have been paid for the travel you would at least specify in the voucher the point from which and the point to which you travelled?

A. Yes.

Q. And if you travelled to several places you would have it itemized one after the other in the order you did the travel, isn't that right?

A. That is right.

Q. So these vouchers show, wouldn't they, the actual travel you were engaged in for the union during each two-week period?

A. Yes, that is right.

Q. And they would show the places you had been during each two-week period, isn't that right?

A. Yes.

Q. Now, I take it that the salary of a National Representative or a Regional Director was not so large that he could afford to omit any of his travel in these vouchers and not get reimbursement for it, is that correct?

A. That is right.

Q. You didn't make any practice of omitting any travel that you engaged in?

A. That is right.

Q. As a matter of fact, you were careful to see that all travel you were engaged in was shown on these vouchers so you could get reimbursed for it?

A. That is right, if it was made in my vehicle.

Q. Or if you made it on a train?

A. That is right.

Q. The practice, if you made it on a train, was to buy a ticket from your own funds and then claim reimbursement from the union?

A. Yes, you would send the receipt to the union.

Q. And you certified on the voucher that you travelled by train from point "A" to point "B" and attached some kind of a copy of the ticket or receipt, isn't that right?

A. That is right.

Q. And you did the same thing if you travelled by air?

A. That is right.

Q. Or if you travelled by bus or any other form of public transportation?

A. That is right.

Q. And if you travelled in your own car you specified the points of travel, from which point to which point, and show the total mileage and claim the amount of money based on the rate that the union gave you per mile, isn't that right?

A. That is right.

Q. Now, isn't it true, Mr. Knott, that a review of your travel vouchers for any given period—excuse me, withdraw that. Isn't it true that a review of your expense vouchers for any given period would show the places you had been during that period?

A. I would say so, yes.

Q. Mr. Knott, in making out these vouchers you were required to and you did sign them, didn't you?

A. Yes.

Q. And you also specified on each voucher the city or post to which you were assigned, isn't that right?

A. Yes, I think so.

Q. For example, if you were assigned to Globe, Arizona, you would specify in the voucher that that was your home office, so to speak, isn't that right?

A. I don't remember whether it was phrased quite that way. I think it may have said, "Home address", or "where check should be sent", or something like that.

(At this point as instrument was shown to Government's counsel by Mr. McTernan).

Mr. McTernan:

May this be marked for identification as defendant's exhibit next in number?

Mr. Broaddus:

Your Honor, we will object to it on the basis of—

The Court:

Well, the Court doesn't yet know what it is. It hasn't been offered. The witness hasn't been interrogated about it.

(Two instruments were then marked "D-4" and "D-5").

Mr. McTernan:

The two sheets stapled together are marked "Defendant's Exhibit 4 and 5-for-identification." (Indicating).

Q. Mr. Knott, I show you Defendant's Exhibit 4 and 5-for-identification. Is Defendant Exhibit 5-for-identification the form of expense voucher which you were required to submit during the period that you were Regional Director of the Southwest area, just directing your attention to the general form, not to its specific contents?

A. Yes.

Q. Is that your signature (indicating), "George Knott", down at the lower left-hand side of the page?

A. Yes, that is my signature.

Q. And there is a blank there, "Where Check Should be Sent", with the entry "Salt Lake"; were you assigned to the Salt Lake Office at that time?

A. Yes; I was.

Q. This sheet, Defendant's 4-for-identification, the pink sheet (indicating), is that a carbon copy of the check issued to you pursuant to the items and totals indicated on Defendant's 5-for-identification, the expense voucher?

A. I only work on the assumption it is. I suppose it is, I don't know.

Q. Well, you see in Defendant's 5-for-identification, a portion of the form entitled "Amount Due", and then below a total of $16.54? (Indicating.)

A. Yes.

Q. And on the pink piece of paper, Defendant's 4-for-identification, which appears to be a check in the upper half of it, doesn't it?

A. Yes.

Q. And on that it shows up here—

Mr. Broaddus:

We haven't been objecting to this because it hasn't been introduced, but counsel is reading from it and introducing the contents of it, and that is what we are objecting to.

The Court:

It would be well to advise the Court what it is and also what its materiality is. The Court doesn't know what it is all about.

Mr. McTernan:

I am not offering it now. I am trying to develop in concrete form what the general testimony of the witness has been.

The Court:

All right, then, you will please not read from it.

Mr. McTernan:
Thank you.

Q. Now, Mr. Knott, you said that you were assigned to the Southwest area in either September or October, 1946?

A. That is correct.

Q. That was the earliest date that you could fix it?

A. That is right.

Q. Now, can you recall how long you were assigned there?

A. To the Southwest area?

Q. Yes?

A. As near as I can come, sir, it would be sometime around the 1st of November, 1947.

Q. Now, in other words, as I get your testimony, the earliest you could have been there was September of '46, is that right?

A. Yes.

Q. And the latest that you were there was around the first part of November, '47, or what year?

A. '47.

Q. '47. Now, could you have arrived in the Southwest area earlier than September or October, '46?

A. Yes, or it could have been later.

Q. What I am trying to get now is the outermost reaches of this time span. What is the earliest you could have been there, as you recall the facts now?

A. I just don't know, sir. I couldn't pin it down any closer than that.

Q. You can't pin it down any closer than September of '46?

A. That is right.

Q. But it could have been as early as August?

A. Could have.

Q. Could it have been any earlier than August?

A. I doubt if it could have been any earlier than August.

Q. As a matter of fact, so far as your recollection of it in terms of the weather you put it in terms of the beginning of the Autumn in the Coeuer d'Alenes, is that right?

A. That is right.

Q. And Autumn begins fairly early up there, doesn't it?

A. Yes, it is a very high altitude.

Q. So the chances are that the time would be September or October, isn't that right?

A. That is probably close to it.

Q. Now, you are clear in your mind that your home office at that time was Globe, Arizona?

A. Yes.

Q. So that from the time you came down to the Southwest area in September and October, 1946, your base of operations, so to speak, was Globe, Arizona?

A. That is right.

Q. And any travel you did from Globe, Arizona on union basis was travel you would apply for reimbursement for in your expense vouchers?

A. That is right.

Q. And that would include travel from Globe, Arizona to Bayard or Silver City, isn't that right?

A. That is right.

Q. You are clear, I take it, that no matter what month you got to the Southwest, that you had this meeting with Joncks in the year '46, the meeting you testified to on direct?

A. It would have been the late part of '46.

Q. Now, I would like to get that as precisely as I can. Would you say it was in October of '46?

A. I wouldn't say, sir. I have racked my mind to try to pin it down to a more definite date, and to say the latter part of '46 is as close as I can come to it.

Q. So the best you can do is say that it was sometime between near the date of your arrival in the Southwest, which was September or October, and the end of that year, is that right?

A. Could have been possibly the first of the next year. I just can't pin it down.

Q. What do you mean by "the first of next year"?

A. The first of 1947.

Q. Well, how far in the year '47, January?

A. I would in all probability say it was somewhere between October, 1946, and January, 1947. That is the best I can do. I simply can't remember any closer date than that.

Q. And in that statement you mean to include the entire month of January, 1947?

A. Yes.

Q. It couldn't have been later than the month of January, 1947?

A. I don't think so.

Q. Your best recollection is that it wasn't later than the month of January, 1947, is that right?

A. Yes.

(At this point several documents were marked "D-6" to "D-12A", inclusive). (Also "D-13" to "D-23A" inclusive.)

Q. I show you—

Mr. Broaddus:

Would counsel let us examine them?

Mr. McTernan:

As soon as they are identified I will be glad to show them to you.

Q. I show you Defendant's Exhibit 9 and 9-A, is that your expense voucher and copy of your check for the period covering the last half of August, 1946?

Mr. Broaddus:

Your Honor, on a similar situation a while ago he already testified that he doesn't know what the second or top exhibit is because he has never seen it.

The Court:

Well, for the moment this is just for identification.

Mr. Broaddus:

May I have the privilege of seeing what Exhibits 9 and 9-A are so I can object properly?

The Court:

Not at this time. The first question is for the witness to identify it if he can.

A. I can identify the white sheet, but I cannot identify the copies of the check.

Q. You mean that you can identify Defendant's Exhibit 9-A?

A. Yes.

Q. And that is the one that has your signature on it, is that right?

A. That is right.

Q. I show you Defendant's Exhibits 10, 10A, and 10B. Can you identify Exhibit 10-A as your expense voucher for the period indicated thereon and bearing your signature?

A. Yes, I can.

Q. I show you Defendant Exhibits 11 and 11-A. Can you identify Defendant's Exhibit 11-A as your expense voucher for the period ending September 30, 1946, and bearing your signature?

A. Yes, I can.

Q. I show you Defendant's Exhibits 12 and 12-A. Can you identify 12-A as your expense voucher for the period ending October 15, '46, and bearing your signature?

A. Yes.

Q. I show you Defendant's Exhibit 13-A. Can you identify that as your expense voucher for the period ending October 31, 1946, and bearing your signature?

A. Yes.

Q. I show you Defendant's Exhibit 14-A. Can you identify it as your expense voucher for the period ending November 15, 1946, and bearing your signature?

A. That is mine.

Q. I show you Defendant's Exhibit 15-A-for-identification. Can you identify it as your expense voucher for the period ending November 30, '46, and bearing your signature?

A. Yes, that is my signature.

Q. I show you Defendant's Exhibit 16-A. Can you identify it as your expense voucher for the period ending December 15, 1946, and bearing your signature?

A. Yes, that is mine.

Q. I show you Defendant's Exhibit 17-A-for-identification. Can you identify it as your expense voucher for the period ending January 15, 1947, and bearing your signature?

A. Yes.

Mr. Broaddus:

We will object to counsel testifying as to what these exhibits cover. They are being identified as to the signature of the witness but what they purport to be I don't believe counsel can testify.

The Court:

He is not stating what they are other than they are expense vouchers. The objection is overruled. However, he is limited for the moment to identification.

Mr. Broaddus:

As to dates and places, and what it purports to cover?

The Court:

Just his signature.

Mr. Broaddus:

That is what I am objecting to, to the additional remarks by counsel.

The Court:

Objection overruled.

Q. I show you Defendant's Exhibit 18-A. Can you identify this as your expense voucher for the period ending January 31, '47, and bearing your signature?

A. Yes.

Q. I show you Defendant's Exhibit 19-A, and ask you if you can identify that as your expense voucher for the period ending February 15, 1947, and bearing your sgina-ture?

A. Yes, that is right.

Q. I show you Defendant's Exhibit 20-A, and ask you if you can identify it as your expense voucher for the

period ending February 28, 1947, and bearing your signature?

A. Yes, that is right.

Q. And I show you Defendant's Exhibit 21-A-for-identification. Can you identify this as your expense voucher for the period ending March 15, 1947, and bearing your signature?

A. Yes.

Q. I show you Defendant's Exhibit 22-A-for-identification. Can you identify this as your expense voucher for the period ending March 31, 1947, and bearing your signature?

A. Yes.

Q. And I show you Defendant's Exhibit 23-A-for-identification and ask you if you can identify that as your expense voucher for the period ending April 15, 1947, and bearing your signature?

A. Yes, sir.

Mr. McTernan:

Your Honor, if you want to have the recess now I will pass these documents to counsel.

The Court:

If you are going to offer them in evidence I would appreciate your passing them to counsel so they can all be examined during the recess.

Mr. McTernan:

That is what we intended to do, Your Honor.

The Court:

The Court will recess for fifteen minutes.

Whereupon, a fifteen-minute recess was taken until 10:50 A. M., at which time proceedings were resumed as follows:

On Cross-Examination Resumed.

Questions by Mr. McTernan:

Q. Now, Mr. Knott, as I remember your testimony before the recess, when you went over for this meeting to Bayard with Mr. Larson and Mr. Jencks, you went from Globe, is that right?

A. To the best of my knowledge, yes.

Q. You did not have the meeting with Jencks and Larson and Graham until after you had transferred from the Coeur d'Alenes area down to Globe, isn't that right?

A. That is right.

Q. Isn't it a fact that you left the Coeur d'Alene area for Globe on March 6, 1947? I show you Defendant's Exhibit 21-A to refresh your recollection.

(Witness examines document).

A. Yes, that is right.

Mr. McTernan:

We offer Defendant's Exhibit 21-A in evidence, Your Honor.

Mr. Broaddus:

We have no objection, Your Honor.

Mr. McTernan:

Your Honor, during the pendency of the trial is it all right if "21-A" remains stapled to "21"? I just don't want to mix up these records.

The Court:
Yes.

Mr. McTernan:
Thank you.

DEFENDANT'S EXHIBIT 21-A was thereupon received in evidence by the Court, and reads in words and figures as follows:

"D-21A"

Expense Account

Original

International Union of Mine, Mill and Smelter Workers
District No. 2 Period Ending Mar. 15, 1947

Transporation

Date	From—To	Amount	Expense allowance
Mar. 1	enroute Kellogg		9.00
2	.....		9.00
3	.....		9.00
4	.....		9.00
5	Arrived Kellogg	64.80	
6	Left Kellogg for Glob Ariz.		9.00
7	.....		9.00
8	.....		9.00
9	.....		9.00
10	.....		9.00
11	Arrived Globe	64.80	9.00

Date	From—To	Amount	Expense allowance
12	Local	.72	9.00
13			9.00
14			9.00
15	Local	2.48	9.00
	Total	132.80	126.00

Note—All accounts must be rendered semi-monthly to the Secretary-Treasurer.

Pay periods are from the 1st to 15th, inclusive, and from 16th to 30th, or 31st, inclusive.

Expense accounts must be filed in each day.

Receipts for all expenditures listed must be sent in with expense account.

If receipts are not received, no payment will be made.

Only ordinary expenses will be reimbursed.

No receipts are necessary for transportation by auto (4¢ a mile).

Telephone and telegraph bills must be listed in detail on back of this sheet. If this is not done, the bills will not be paid. Phone calls from pay booths must be so listed.

Expense allowance will not be allowed unless employee is away from home station over night.

No staff member may incur expenses beyond those allowed by International Union.

Fill in columns at right.

Signature (S.) George Knott.

Where Check Should be Sent 669 N. Broad St.

Approved by Globe, Arizona.

Amount Due

1.	Salary	190.67
2.	Expense Allowance	126.00
3.	Transportation	132.80
4.	Hand Bills and Bulletins	
5.	Meetings Promotion Express	
6.	Postage	
7.	Telephone-Telegraph	
8.	Miscellaneous	
	Total	449.47

Deductions

1.	Social Security-State Unemp. Tax	1.91
2.	Advances	50.00
3.	War Bonds	
4.	American-Allied War Relief	
5.	Government Tax	4.80
6.	Group Insurance	
	Total Deductions	

Q. Now, Mr. Knott, the earliest period that you fixed this meeting with Jencks, Larson and Graham was October, 1946?

(Witness nods his head.)

The Court:

Mr. Witness, always speak up because the Court Reporter can't get a nod. You will have to say something for the record.

A. I am sorry. Yes.

Q. Mr. Witt suggested to me that I might have been in error in that question. Was it September, 1946, or October, 1946, which was the earliest period that this meeting took place?

A. I think I said the earliest was September of '46.

Q. Now, I show you Defendant's Exhibit 10-A-for-identification, which you have identified as your expense voucher for the two-week period ending September 15, 1946. Where did you travel during that period, Mr. Knott?

A. This travel would have been entirely in the Coeur d'Alene area.

Q. Up in Idaho and eastern Washington, is that right?

A. That is right.

Q. And that is for the first two weeks in September, is that right?

A. That is right.

Mr. McTernan:

We offer Defendant's Exhibit 10-A in evidence, Your Honor.

Mr. Broaddus:

No objection.

DEFENDANT'S EXHIBIT 10-A was thereupon received in evidence by the Court, and reads in words and figures as follows:

"D-10A"

Original

Expense Account

International Union Mine, Mill and Smelter Workers

District No. 7 Period Ending Sept. 15, 1946

Date	From—To	Amount	Expense Allowance
Sept. 1	Kellogg—Yellow Pine	21.28	6.00
2	Yellow Pine		6.00
3	Kellogg	21.28	
4	Local & Pasco	8.28	6.00
5	Pasco—Seattle	6.04	6.00
6	.....		6.00
7	Seattle—Pasco	6.04	6.00
8	Pasco—local—Richland—Pasco	2.44	6.00
9	Pasco—Kellogg	11.00	
10	Local to Coeur d'Alenes ..	2.84	6.00
11	C.D.A.—Spokane	1.48	6.00
12	Spokane—Kellogg	3.24	
13	Kellogg—Seattle	15.28	6.00
14	Local	.60	6.00
15	Seattle—Kellogg	15.28	
	Total	115.08	66.00

Note—All accounts must be rendered semi-monthly to the Secretary-Treasurer.

Pay periods are from the 1st to 15th, inclusive, and from 16th to 30th, or 31st, inclusive.

Expense accounts must be filled in each day.

Receipts for all expenditures listed must be sent in with expense account.

If receipts are not received, no payment will be made.

Only ordinary expenses will be reimbursed.

No receipts are necessary for transportation by auto (4¢ a mile.)

Telephone and telegraph bills must be listed in detail on back of this sheet. If this is not done, the bills will not be paid. Phone calls from pay booths must be so listed.

Expense allowance will not be allowed unless empoyee is away from home station over night.

No staff mmber may incur expenses beyond those allowed by International Union.

Fill Columns at right.

Signature (S.) George Knott.

Where Check Should be Sent Box 929—Kellogg.

Approved by Idaho.

Amount Due

1.	Salary	178.75
2.	Expense Allowance	66.00
3.	Transportation	115.08
4.	Hand Bills and Bulletins	
5.	Meetings Promotion Expense	
6.	Postage	
7.	Telephone—Telegraph #576	34.80
8.	Miscellaneous	
	Total	394.63

Deductions

1.	Social Security—State Uemp. Tax	1.79
	• • • • • • •	
5.	Government Tax	2.70
	Total Deductions	

Q. Now, I show you—withdraw that. As you look at Defendant's Exhibit 10-A you can say, can't you, that during that entire two weeks in September you were up in the Coeur d'Alene area?

A. That is right.

Q. You got any idea as to how far the Coeur d'Alene area is from Bayard, New Mexico?

A. I would say close to fifteen hundred to two thousand miles.

Q. I show you Defendant's Exhibit 11-A, which you have identified as your expense voucher for the two-week period ending September 30, 1946. Where was all of your travel in that two-week period, Mr. Knott?

A. In the Coeur d'Alene area.

Q. Does that mean that in that two-week period you were in the Coeur d'Alene area during the entire two weeks?

A. That is right.

Mr. McTernan:

We offer Defendants' Exhibit 11-A in evidence.

Mr. Broaddus:

No objection.

Mr. McTernan:

I take it, Your Honor, that silence means that the documents are admitted?

The Court:

Oh, yes. Where there is no objection the documents are admitted. Let it be so understood.

DEFENDANT'S EXHIBIT 11-A, being received in evidence, reads in words and figures as follows:

"D-11A"

Original

Expense Account

International Union Mine, Mill and Smelter Workers

District No. 7 Period Ending Sept. 30, 1946

Transportation

Date	From—To	Amount	Expense Allowance
Sept. 16	Kellogg—Local	1.68	
17	Kellogg—Local	2.16	
18	Kellogg—Spokane	3.72	6.00
19	Spokane—Kellogg	2.08	
20	Kellogg—Pasco	10.44	6.00
21	Pasco—Seattle	5.68	6.00
22	Seattle—local	.84	6.00
23	Seattle—local	.80	6.00
24	Seattle—local	1.64	6.00
25	Seattle—local	1.28	6.00
26	Seattle—local	.92	6.00
27	Seattle—local	.84	6.00
28	Seattle—local	2.08	6.00
29	Seattle—local	2.20	6.00
30	Seattle—local	1.24	6.00
	Total	37.60	73.25

Note—All accounts must be rendered semi-monthly to the Secretary-Treasurer.

Pay periods are from the 1st to 15th, inclusive, and from 16th to 30th, or 31st, inclusive.

Expense accounts must be filled in each day.

Receipts for all expenditures listed must be sent in with expense account.

If receipts are not received, no payment will be made.

Only ordinary expenses will be reimbursed.

No receipts are necessary for transportation by auto (4¢ a mile.)

Telephone and telegraph bills must be listed in detail on back of this sheet. If this is not done, the bills will not be paid. Phone calls from pay booths must be so listed.

Expense allowance will not be allowed unless employee is away from home station over night.

No. staff member may incur expenses beyond those allowed by International Union.

Fill in columns at right.

Signature (S.) George Knott.

Where Check Should be sent 846 So. Division St.

Approved by Kellogg, Idaho.

Amount Due

1.	Salary		178.75
2.	Expense Allowance	72.00 JJL	73.25
3.	Transportation		37.60
4.	Hand Bills and Bulletins		
5.	Meetings Promotion Expense..		
6.	Postage (No receipt)		3.00
7.	Telephone-Telegraph		
8.	Miscellaneous		
	Total		292.60

Deductions

1.	Social Security—State Unemp.	
	. . . . .	
	Tax	1.79
5.	Government Tax	2.70
	Total Deductions	

Q. Mr. Knott, I show you Defendant's Exhibit 12-A, which you have identified as your expense voucher for the two-week period ending October 15, 1946. Where was your travel in the first two weeks of October, Mr. Knott?

A. In the Coeur d/Alene area and Canada.

Q. And that means you were in the Coeur d/Alene area and Canada during the entire two-week period?

A. That is right.

Mr. McTernan:

We offer "12-A".

Mr. Broaddus:

No objection.

DEFENDANT'S EXHIBIT 12-A was thereupon received in evidence by the Court, and reads in words and figures as follows.

"D-12A"

Original

Expense Account

International Union Mine, Mill and Smelter Workers

District No. 7 Period Ending Oct. 15, 1946

Transporation

Date	From—To	Amount	Expense Allowance
Oct. 1	Seattle to Kellogg—local	17.68	1.25
2	Kellogg—Spokane	4.12	6.00
3	Spokane—Kellogg	4.24	1.25
4	Kellogg—Spokane	3.28	6.00
5	Spokane		6.00
6	Spokane		6.00
7	Spokane to Kellogg	4.52	1.25
8	Local	2.08	
9	Local	2.44	
10	Local	3.28	
11	Kellogg—Spokane	3.24	6.00
12	Spokane—Kellogg—Metaline	10.76	6.00
13	Metaline—Trail, B.C.	2.48	6.00

Date	From—To	Amount	Expense Allowance
14	In Trail	1.28	6.00
15	Trail		6.00
	Total	59.40	57.75

Note—All accounts must be rendered semi-monthly to the Secretary-Treasurer.

Pay periods are from the 1st to 15th, inclusive, and from 16th to 30th, or 31st, inclusive.

Expense accounts must be filled in each day.

Receipts for all expenditures listed must be sent in with expense account.

If receipts are not received, no payment will be made.

Only ordinary expenses will be reimbursed.

No receipts are necessary for transportation by auto (4¢ a mile.)

Telephone and telegraph bills must be listed in detail on back of this sheet. If this is not done, the bills will not be paid. Phone calls from pay booths must be so listed.

Expense allowance will not be allowed unless employee is away from home station over night.

No staff member may incur expenses beyond those allowed by International Union.

Fill in columns at right.

Signature (S.) George Knott.

Where Check Should be Sent 846 So. Division St.

Approved by Kellog—Idaho.

	Amount Due	
1.	Salary	178.75
2.	Expense Allowance	57.75
3.	Transportation	59.40
4.	Hand Bills and Bulletins	
5.	Meetings Promotion Expense	10.50
6.	Postage	3.00
7.	Telephone—Telegraph	
8.	Miscellaneous	
	Total	309.40

	Deductions	
1.	Social Security—State Unemp. Tax	.77
	. . . . .	
2.	Government Tax	2.70
	Total Deductions	

Q. I show you Defendant's Exhibit 13-A-for-identification, which you have identified as your expense voucher for the two-week period ending October 31, 1946. Where was your travel in that two-week period Mr. Knott?

A. In the same area.

Q. In the Coeur d'Alenes and Canada?

A. Coeur d'Alenes.

Q. Does that mean you were in the Coeur d'Alene area during that entire two-week period?

A. That is right.

Mr. McTernan:

We offer Defendant's Exhibit 13-A in evidence, Your Honor.

Mr. Broaddus:

No objection.

DEFENDANT'S EXHIBIT 13-A was thereupon received in evidence by the Court, and reads in words and figures as follows:

"D-13A"

Expense Account

Original

International Union Mine, Mill and Smelter Workers

District No. 7 Period Ending Oct. 31, 1946

Transporation

Date	From—To	Amount	Exp. Allowances
Oct. 16	Trail—Metalline	10.48	6.00
17	Metalline—Chewelak	5.48	6.00
18	Chewelak—Hailey ..	26.44	6.00

19	.....		6.00	
20	.....		6.00	
21	Local in Hailey	2.08	6.00	
22	Hailey—Corda	11.12	6.00	
23	Corda—Kellogg	36.04	6.00	
24	in Kellogg-trip completed PM		1.25	
25	Kellogg—Metalline Falls	8.08	6.00	
26	In Metalline Falls ..		6.00	
27	Metalline—Kellogg..	8.00	1.25	
28	Kellogg—Tacoma	16.36	6.00	
29	Tacoma		6.00	
30	Tacoma		6.00	
31	Tacoma—Kellogg ...	16.36	1.25	
	Total	140.44	81.75	78.00

Note—All accounts must be rendered semi-monthly to the Secretary Treasurer.

Pay periods are from the 1st to 15th, inclusive, and from 16th to 30th, or 31st, inclusive.

Expense accounts must be filled in each day.

Receipts for all expenditures listed must be sent in with expense account.

If receipts are not received, no payment will be made.

Only ordinary expenses will be reimbursed.

No receipts are necessary for transportation by auto (4¢ a mile.)

Telephone and telegraph bills must be listed in detail on back of this sheet. If this is not done, the bills will not be paid. Phone calls from pay booths must be so listed.

Expense allowance will not be allowed unless employee is away from home station over night.

No staff member may incur expenses beyond those allowed by International Union.

Fill in columns at right.

Signature (S.) George Knott.

Where Check Should be Sen 846 So. Division St.

Approved by Kellogg—Idaho.

	Amount Due	
1. Salary	178.75	
2. Expense Alowance	81.75	78.00
3. Transportation	140.44	
4. Hand Bills and Bulletins		
5. Meetings Promotion Expense		
6. Postage		
7. Telephone—Telegraph	16.86	
8. Miscellaneous		
Total	417.80	

Deductions

* * *

5. Government Tax	2.70
Total Deductions	

Q. Now, I show you Defendant's Exhibit 14-A-for identification, which you have identified as your expense voucher for the two-week period ending November 15, 1946. Where did you travel in that two-week period, Mr. Knott?

A. Canada and the Coeur d'Alene area.

Q. Does that mean that you were in the Coeur d'Alene area and Canada during that entire two-week period?

A. That is right.

Mr. McTernan:

We offer Defendant's Exhibit 14-A in evidence, Your Honor.

Mr. Broaddus:

No objection.

DEFENDANT'S EXHIBIT 14-A was thereupon received in evidence by the Court, and reads in words and figures as follows:

"D-14A"

Expense Account

Original

International Union Mine, Mill and Smelter Workers

District No. 7 Period Ending Nov. 15, 1946

Transporation

Date	From—To	Amount	Exp. Allowance
Nov. 1	Kellogg—Trail	10.04	6.00
2	Local	1.28	6.00
3	Trail—Kellogg-Wallace	10.52	1.25
4	Local	2.04	

Date	From—To	Amount	Exp. Allowance
5	Local	1.68	
6	Kellogg—Trail	10.04	6.00
7	Local	2.08	6.00
8	Local	1.24	6.00
9	Trail—Metalline	2.88	6.00
10	Metalline—Trail	2.92	6.00
11	Local		6.00
12	Local	1.32	6.00
13	Local	.84	6.00
14	Local	2.24	6.00
15	Local	1.52	6.00
	Total	50.64	73.25

Note:-All accounts must be rendered semi-monthly to the Secretary-Treasurer.

Pay periods are from the 1st to 15th, inclusive, and from 16th to 30th, or 31st, inclusive.

Expense accounts must be filled in each day.

Receipts for all expenditures listed must be sent in with expense account.

If receipts are not received, no payment will be made.

Only ordinary expenses will be reimbursed.

No receipts are necessary for transportation by auto (4¢ a mile.)

Telephone and telegraph bills must be listed in detail on back of this sheet. If this is not done, the bills will not be paid. Phone calls from pay booths must be so listed.

Expense allowance will not be allowed unless employee is away from home station over night.

No staff member may incur expenses beyond those allowed by International Union.

Fill in columns at right.

Signature (S.) George Knott.

Where Check Should be Sent 846 So. Division St.

Approved by Kellogg—Idaho.

	Amount Due		
1. Salary			178.75
2. Expense Allowance		72.00	73.25
3. Transportation			50.64
4. Hand Bills and Bulletins			
5. Meetings Promotion Expense			
6. Postage			
7. Telephone—Telegraph			
8. Miscellaneous			
			301.39
Total			302.64

Deductions

* * *

5. Government Tax	2.70
Total Deductions	

* * * *

Q. Mr. Knott, I show you Defendant's Exhibit 15A-for-identification, which you have identified as your expense voucher for the two-week period ending November 30, 1946. Where did you travel in that two-week period?

A. That would have been in the Coeur d'Alenes and Canada.

Q. Does that mean that you were in the Coeur d'Alene area and Canada during that entire two-week period?

A. Yes, it does.

Mr. McTernan:

I offer Defendant's Exhibit 15-A for identification in evidence, your Honor.

Mr. Broaddus:

No objection.

DEFENDANT'S EXHIBIT 15-A was thereupon received in evidence by the Court, and reads in words and figures as follows:

"D-15A."

Original

Expense Account

International Union Mine, Mill and Smelter Workers

District No. 7 Period Ending Nov. 30-46

Date	From—To	Amount	Exp. Allowance
Nov. 16	Kellogg—Spokane	2.56	6.00
17	Spokane—Burke	4.04	
18	Burke—Ymir	9.64	6.00
19	Ymir		6.00
20	Ymir—Trail	2.88	6.00
21	Trail—local	1.68	6.00
22	Trail—Seattle	18.64	6.00
23	Seattle—Kimberley	18.80	6.00
24	Kimberley—local	.48	6.00
25	Kimberley—Trail	13.20	6.00
26	Trail—local	1.24	6.00
27	Trail—local	1.64	6.00
28	Trail—Spokane	6.80	6.00
29	Spokane—Local	.88	6.00
30	Spokane—Metaline Falls	4.40	6.00
	Total	86.88	84.00

Note: All accounts must be rendered semi-monthly to the Secretary-Treasurer.

Pay periods are from the 1st to 15th, inclusive, and from 16th to 30th, or 31st, inclusive.

Expense accounts must be filed in each day.

Receipts for all expenditures listed must be sent in with expense account.

If receipts are not received, no payment will be made.

Only ordinary expenses will be reimbursed.

No receipts are necessary for transportation by auto (4¢ a mile).

Telephone and telegraph bills must be listed in detail on back of this sheet. If this is not done, the bills will not be paid. Phone calls from pay booths must be so listed.

Expense allowance will not be allowed unless employee is away from home station over night.

No staff member may incur expenses beyond those allowed by International Union.

Fill in columns at right.

Signature (S.) George Knott.

Where Check Should be Sent 846 So. Division St.

Approved by Kellogg, Idaho.

Amount Due

1.	Salary	178.75
2.	Expense Allowance	84.00
3.	Transportation	86.88

* * *

Total 349.63

Deductions

* * *

5. Government Tax 2.70

* * *

Total Deductions .....

* * *

Q. I show you Defendant's Exhibit 16-A—Withdraw that. There may be some question as to whether this has been identified, so I will ask the identification question first. Is Defendant's Exhibit 16-A—for identification your expense voucher for the two-week period ending December 15, 1946, and bearing your signature? (Indicating.).

A. Yes.

Q. Where did you travel during that two-week period, Mr. Knott?

A. In the Coeur d'Alene Area and in Canada.

Q. And does that mean that you were in the Coeur d'Alene Area and Canada during that entire two-week period?

A. Yes.

Mr. McTernan:

We offer Defendant's Exhibit 16-A—for identification in evidence.

Mr. Broaddus:

No objection.

DEFENDANT'S EXHIBIT 16-A was thereupon received in evidence by the Court, and reads in words and figures as follows:

"D-16A".

Original

Expense Account

International Union Mine, Mill and Smelter Workers

District No. 7 Period Ending Dec. 15, 1946

Transportation

Date		From—To	Amount	Exp. Allowance
Dec.	1	Metaline Falls—Trail	4.04	6.00
	2	Trail—Rosaland—Trail	1.64	6.00
	3	Trail—Burke	12.32	1.25 out
	4	Burke—Spokane	3.84	6.00
	5	Spokane—Chewelak .	2.60	6.00
	6	Chewelak—Spokane— Metalline—Spokane	11.84	6.00
	7	Spokane—Kellogg ..	2.88	1.25 out
	8	Kellogg—Wallace—		

	Mullen—Kellogg ..	2.04	1.25	out
9	Kellogg—Wallace—Kellogg & Local ..	1.64		
10	Kellogg—Kimberly .	9.32	6.00	
11	Kimberly—Local ...	.48	6.00	
12	Kimberly		6.00	
13	Kimberly—Trail	13.24	6.00	
14	Trail—Local	.84	6.00	
15	Trail—Spokane	8.16	6.00	
	Total	74.52	69.75	66.00

Note:—All accounts must be rendered semi-monthly to the Secretary-Treasurer.

Pay periods are from the 1st to 15th, inclusive, and from 16th to 30th, or 31st, inclusive.

Expense accounts must be filled in each day.

Receipts for all expenditures listed must be sent in with expense account.

If receipts are not received, no payment will be made.

Only ordinary expenses will be reimbursed.

No receipts are necessary for transportation by auto (4¢ a mile).

Telephone and telegraph bills must be listed in detail on back of this sheet. If this is not done, the bills will not be paid. Phone calls from pay booths must be so listed.

Expense allowance will not be allowed unless employee is away from home station over night.

No staff member may incur expenses beyond those allowed by International Union.

Fill in columns at right.

Signature (S.) George Knott.

Where Check Should be Sent 846 So. Division St.

Approved by Kellogg, Idaho.

Amount Due

1.	Salary	178.75
2.	Expense Allowance	66.00
3.	Transportation	74.52
4.	Hand Bills and Bulletins	
5.	Meetings Promotion Expense	
6.	Postage	
7.	Telephone—Telegraph	1.09
8.	Miscellaneous	
	Total	320.36

Deductions

* * *

5. Government Tax 2.70

* * *

Total Deductions .....

Q. Now, I show you Defendant's Exhibit 17A—for identification, which you have identified as your expense voucher for the two-week period ending January 15, 1947.

Where was your travel during that period, Mr. Knott?

A. In the Coeur d'Alene area and Canada.

Q. And does that mean that during that entire two-week period you were in the Coeur d'Alene area and Canada?

A. Yes, it does.

Mr. McTernan:

We offer Defendant's Exhibit 17A—for identification in evidence.

The Court:

All right.

DEFENDANT'S EXHIBIT 17-A was thereupon received in evidence by the Court, and reads in words and figures as follows:

"D-17A".

Original

Expense Account

International Union Mine, Mill and Smelter Workers

District No. 7 Period Ending Jan. 15-1947

Transportation

Date	From—to	Amount	Exp. Allowance
Jan. 1—47			
2	Local	1.64	
3	Local	2.08	
4	Local	2.52	

Transportation

Date	From—to	Amount	Exp. Allowance	
5	Kellogg—Kimberly	10.12	9.00	
6	Kimberly		9.00	
7	Kimberly		9.00	
8	Kimberly		9.00	
9	Kimberly—Sandpoint	6.68	9.00	
10	Sandpoint—Kellogg	3.64	1.25	
11	Kellogg—Kimberly	10.88	9.00	
12	Kimberly		9.00	
13	Kimberly—Trail	11.88	9.00	
14	Trail		9.00	
15	Trail		9.00	
	Total	49.44	91.25	90.00

Note—All accounts must be rendered semi-monthly to the Secretary-Treasurer.

Pay periods are from the 1st to 15th, inclusive, and from 16th to 30th, or 31st, inclusive.

Expense accounts must be filled in each day.

Receipts for all expenditures listed must be sent in with expense account.

If receipts are not received, no payment will be made.

Only ordinary expenses will be reimbursed.

No receipts are necessary for transportation by auto (4¢ a mile).

Telephone and telegraph bills must be listed in detail on back of this sheet. If this is not done, the bills will not be paid. Phone calls from pay booths must be so listed.

Expense allowance will not be allowed unless employee is away from home station over night.

No staff member may incur expenses beyond those allowed by International Union.

Fill in columns at right.

Signature (S.) George. Knott.

Where Check Should be Sent 846 So. Division St.

Approved by Kellogg, Idaho.

		Amount Due
1.	Salary	189.58
2.	Expense Allowance	90.00
3.	Transportation	49.44
4.	Hand Bills and Bulletins	
5.	Meetings Promotion Expense	
6.	Postage	
7.	Telephone-Telegraph	10.75
8.	Miscellaneous	
	Total	339.77

* * *

Q. Now, Mr. Knott, I notice that there is a gap between the period covered by 16-A and 17-A, namely, the last two weeks in December. Now, you didn't come down to New Mexico during that two-week period, did you? Do you follow me? (Shows documents to witness) Look at the

dates, "16-A" is for the period ending December 15, 1946, and "17-A" is for the period ending January 15, 1947, and there is a gap there of two weeks?

A. The answer is no.

Q. The answer is that you did not come down to New Mexico during that two-week period?

A. That is right.

Q. Now, I show you Defendant's Exhibit 18A—for identification, which you have identified as your expense voucher for the two-week period ending January 31, 1947, and ask you where you travelled in that two-week period?

A. Canada and the Coeur d'Alenes, and Denver, Colorado.

Q. And does that mean that during that entire two-week period you were either in the Coeur d'Alene area, Canada, or Denver?

A. That is right.

Mr. McTernan:

We offer Defendant's Exhibit 18-A—for identification in evidence, your Honor.

The Court:

All right.

DEFENDANT'S EXHIBIT 18-A was thereupon received in evidence by the Court, and reads in words and figures as follows:

"D-18A."

Original

Expense Account

International Union Mine, Mill and Smelter Workers

District No. 7 Period Ending Jan. 31-1947

Transportation

Date	From—To	Amount	Exp. Allowance
Jan. 16	Trail		9.00
17	Trail—Kellogg & local	10.32	1.25
18	Local	1.60	
19	Local	.48	
20	Local	1.24	
21	Local	1.68	
22	Kellogg—Chewelak	5.68	9.00
23	Chewelak—Kellogg	5.68	1.25
24	Local	2.04	
25	Local	1.28	
26	Kellogg—Howe Sound	13.90	9.00
27	Howe Sound		9.00
28	Howe Sound		9.00
29	Howe Sound—Wenatchee.	4.26	9.00
30	Wenatche—Kellogg	9.64	1.25
31	Kellogg—Denver	43.60	9.00
	Total	101.44	66.75

Note: All accounts must be rendered semi-monthly to the Secretary-Treasurer:

Pay periods are from the 1st to 15th, inclusive, and from 16th to 30th, or 31st, inclusive.

Expense accounts must be filled in each day.

Receipts for all expenditures listed must be sent in with expense account.

If receipts are not received, no payment will be made.

Only ordinary expenses will be reimbursed.

No receipts are necessary for transportation by auto (4¢ a mile.)

Telephone and telegraph bills must be listed in detail on back of this sheet. If this is not done, the bills will not be paid. Phone calls from pay booths must be so listed.

Expense allowance will not be allowed unless employee is away from home station over night.

No staff member may incur expenses beyond those allowed by International Union.

Fill in columns at right.

Signature (S.) George Knott.

Where Check Should be Sent Adams Hotel.

Approved by Denver, Colo.

Amount Due

1.	Salary ÷ 1.09	171.75
2.	Expense Allowance	66.75
3.	Transportation	101.44
4.	Hand Bills and Bulletins	
5.	Meetings Promotion Expense	
6.	Postage	1.02
7.	Telephone—Telegraph	
8.	Miscellaneous	
	Total	359.87

Deductions

1.	Social Security	1.92
	* * *	
5.	Government Tax	4.80
	Total Deductions	

* * *

Q. Mr. Knott, I show you Defendant's Exhibit 19A—for identification, being your expense voucher, as you have identified, for the two-week period ending February 15, 1947. Can you tell us where your travel was during that period?

A. Denver and the Coeur d'Alenes.

Q. And does that mean that for that two-week period you were either in Denver or the Coeur d'Alene area?

A. That is right.

Mr. McTernan:

We offer Defendant's Exhibit 19-A—for identification in evidence, your Honor.

Mr. Broaddus:
No objection.

DEFENDANT'S EXHIBIT 19-A was thereupon received in evidence by the Court, and reads in word and figures as follows:

"D-19A".

Original

Expense Account

International Union Mine, Mill and Smelter Workers

District No. 7 Period Ending Feb. 15-1947

Date	From—To	Amount	Exp. Allowance
Feb. 1	Enroute Denver		9.00
2	Arrived Denver		9.00
3	Denver		9.00
4	Denver		9.00
5	Denver		9.00
6	Denver		9.00
7	Denver		9.00
8	Left Denver		9.00
9			9.00
10	Arrived Spokane	46.40	9.00
11	Spokane—Chewelak	2.60	9.00
12	Chewelak—Kellogg	5.52	1.25
13	Local	1.28	
14	Local	1.64	
15	Local	.88	
	Total	58.32	100.25

Note: All accounts must be rendered semi-monthly to the Secretary-Treasurer.

Pay periods are from the 1st to 15th, inclusive, and from 16th to 30th, or 31st, inclusive.

Expense accounts must be filled in each day.

Receipts for all expenditures listed must be sent in with expense account.

If receipts are not received, no payment will be made.

Only ordinary expenses will be reimbursed.

No receipts are necessary for transportation by auto (4¢ a mile.)

Telephone and telegraph bills must be listed in detail on back of this sheet. If this is not done, the bills will not be paid. Phone calls from pay booths must be so listed.

Expense allowance will not be allowed unless employee is away from home station over night.

No staff member may incur expenses beyond those allowed by International Union.

Fill in columns at right.

Signature (S.) George Knott.

Where Check Should be Sent .....

Approved by 846 So. Division St.
Kellogg, Idaho

Amount Due

1.	Salary	190.67
2.	Expense Allowance	100.25
3.	Transportation	58.32
4.	Hand Bills and Bulletins	
5.	Meetings Promotion Expense	
6.	Postage	5.00
7.	Telephone—Telegraph	46.73
8.	Miscellaneous	
	Total	400.97

Deductions

1.	Social Security	1.91
2.	Advances	
3.	War Bonds	
4.	American-Allied War Relief	
5.	Government Tax	4.80
6.	Group Insurance	
	Total Deductions	

* * *

Q. I show you Defendant's Exhibit 20A—for identification, being, as you have identified it, your expense voucher for the two-week period ending February 28, 1947. Where was your travel during that two-week period?

A. In the Coeur d'Alenes, and from the Coeur d'Alenes to Arizona.

Q. And that shows that you left the Coeur d'Alene area on or about March 16, 1947?

A. No, this is for February, not for March.

Q. Oh, this indicates that you made a trip to Arizona on Februarv 22nd and returned on February 28th to the Coeur d'Alene area?

A. That is right.

Q. Is there anything to indicate that you left Arizona for any other area in the Southwest in that two-week period?

A. No. It simply is marked down there as local travel.

Q. And can you tell from the entries there what the mileage on that local travel was?

A. Frankly, I don't remember what the mileage rate was anymore. No, I can't say.

Q. Well, the total amount for mileage was $2.08? (Indicating)

A. $2.08, and the difference between this figure (indicating) and this figure (indicating), it would be $1.64. This is "Local and return".

Q. So it is $2.08 and $1.64, is that right?

A. That is right.

Q. What is your best recollection as to the mileage rate at that time?

A. I would say probably four cents a mile.

Q. So that this item (indicating) represents some sixty or seventy miles of travel?

A. I would say so.

Q. You know how far it is from Globe, Arizona to Bayard, New Mexico?

A. Not offhand.

Q. Is it more than sixty or seventy miles?

A. I would say so.

Q. When you were paid for your travel you were paid round trip, weren't you?

A. Yes.

Q. Is it more than sixty or seventy miles round trip from Globe to Bayard?

A. I would say yes.

Q. Considerably more, is it?

A. Yes.

Q. I show you Defendant's Exhibit 21A—for identification—oh, I think this is in evidence—Defendant's Exhibit 21-A. Will you tell us from looking at that expense voucher, which is for the period ending March 15, 1947, where your travel was in that two-week period?

A. Yes, to Kellogg, Idaho, and from Kellogg, Idaho to Globe, Arizona.

Q. And any other?

A. And local transportation.

Q. Now, this is the expense voucher which shows the date on which your Coeur d'Alene assignment ended and your Globe, Arizona assignment began, isn't that right?

A. That is right.

Q. And there is shown on that voucher no travel from Globe, Arizona to Bayard, New Mexico, is there?

A. Not as such.

Q. Or in any other form?

A. No.

Q. I show you Defendant's Exhibit 22-A—for identification, being, as you have identified it, your expense voucher for the two-week period ending March 31, 1947, and ask you if you can tell us where your travel was in that period?

A. This would have been all Globe, Arizona; Hayden, Arizona; Superior, Arizona; Morenci, Arizona; and El Paso, Texas.

Q. That is all?

A. That is all it says.

Mr. McTernan:

We offer Defendant's Exhibit 22-A—for identification in evidence, your Honor.

Mr. Broaddus:

No objection.

DEFENDANT'S EXHIBIT 22-A was thereupon received in evidence by the Court, and reads in words and figures as follows:

"D-22A".

Original

Expense Account

International Union Mine, Mill and Smelter Workers

District No. 2 Period Ending March 31st, 1947

Transportation

Date	From—To	Amount	Exp. Allowance
Mar. 16	Globe to Hayden & return	5.64	9.00
17	.....		9.00
18	.....		9.00
19	local	1.24	9.00
20	local and to Superior and return	2.52	9.00
21	.....		9.00
22	Globe—Hayden and return	5.72	9.00
23	Globe—Hayden and return	5.60	9.00
24	local	1.24	9.00
25	Globe—Hayden and return	5.54	9.00
26	.....		9.00
27	Globe—Hayden and return	5.54	9.00
28	Globe to Morenci and El Paso	16.52	9.00
29	.....		9.00
30	El Paso—Globe	13.32	9.00
31	Local	.48	9.00
	Total	63.36	144.00

Note—All accounts must be rendered semi-monthly to the Secretary-Treasurer.

Pay periods are from the 1st to 15th, inclusive, and from 16th to 30th, or 31st, inclusive.

Expense accounts must be filled in each day.

Receipts for all expenditure listed must be sent in with expense account.

If receipts are not received, no payment will be made.

Only ordinary expenses will be reimbursed.

No receipts are necessary for transportation by auto (4¢ a mile.)

Telephone and telegraph bills must be listed in detail on back of this sheet. If this is not done, the bills will not be paid. Phone calls from pay booths must be so listed.

Expense allowance will not be allowed unless employee is away from home station over night.

No staff member may incur expenses beyond those allowed by International Union.

Fill in columns at right.

Signature George Knott—(S.) George Knott.

Where Check Should be Sent 669 N. Broad St. Globe, Arizona.

Aproved by .....

Amount Due

1.	Salary	190.66
2.	Expense Allowance	144.00
3.	Transportation	63.36
4.	Hand Bills and Bulletins	
5.	Meetings Promotion Expense	
6.	Postage	
7.	Telephone—Telegraph	
8.	Miscellaneous	
	Total	398.02

Deductions

1.	Social Security—State Unemp. Tax	1.91
2.	Advances	100.00
3.	War Bonds	
4.	American-Allied War Relief	
5.	Government Tax	4.80
6.	Group Insurance	
	Total Deductions	

* * *

Q. I show you Defendant's Exhibit 23A—for identification, being your expense voucher, as you have identified, it, for the two-week period ending April 15, 1947, and ask you if you can tell us where your travel was in that two-week period?

A. This would have been all within the state of Arizona.

Mr. McTernan:

We offer Defendant's Exhibit 23A—for identification in evidence, your Honor.

The Court:

All right.

DEFENDANT'S EXHIBIT 23-A was thereupon received n evidence by the Court, and reads in words and figures s follows:

"D-23A".

Original

Expense Account

International Union Mine, Mill and Smelter Workers

District No. 2 Period Ending April 15th, 1947

Transportation

Date	From—To	Amount	Exp. Allowance
Apr. 1	Local and Hayden and return	5.76	9.00
2	Local	.84	9.00
3	Local and to Hayden	5.68	9.00
4	Local and to Phoenix and ret.	7.64	
5	Local and to Ajo	9.20	9.00
6	Return from Ajo	9.20	1.25
7	Monday to local	.84	
8	Local and to Superior	2.84	
9	Morenci and return	17.52	1.25
10	Superior and return	2.08	
11	Local	.60	
12	Hayden and return	7.54	
13	Superior and return	2.08	
14	Hayden and return	7.54	
15			
	Total	79.36	38.50

Note—All accounts must be rendered semi-monthly to the Secretary-Treasurer.

Pay periods are from the 1st to 15th, inclusive, and from 16th to 30th, or 31st, inclusive.

Expense accounts must be filled in each day.

Receipts for all expenditures listed must be sent in with expense account.

If receipts are not received, no payment will be made.

Only ordinary expenses will be reimbursed.

No receipts are necessary for transportation by auto (4¢ a mile.)

Telephone and telegraph bills must be listed in detail on back of this sheet. If this is not done, the bills will not be paid. Phone calls from pay booths must be so listed.

Expense allowance will not be allowed unless employee is away from home station over night.

No staff member may incur expenses beyond those allowed by International Union.

Fill in columns at right.

Signature (S.) George Knott.

Where Check Should be Sent 669 N. Broad St.

Approved by Globe, Arizona.

Amount Due

1.	Salary	190.67
2.	Expense Allowance	38.50
3.	Transportation	79.36

* * *

Total 308.53

Deductions

1.	Social Security—State Unemp. Tax	1.91
2.	Advances	50.00
3.	War Bonds	
4.	American-Allied War Relief	
5.	Government Tax	4.80
6.	Group Insurance	
	Total Deductions	

* * *

Q. Mr. Knott, I omitted Defendant's Exhibit 9A—for identification, because you had identified it for a period preceding September 1, 1946. Is that your voucher, expense and travel voucher, for the two-week period prior to September 1, 1946? (Indicating)

A. Yes, it is.

Q. And where was your travel in that period?

A. In the Coeur d'Alenes, Idaho.

Mr. McTernan:

We offer Defendant's Exhibit 9A—for identification in evidence, your Honor.

DEFENDANT'S EXHIBIT 9-A was thereupon received in evidence by the Court, and reads in words and figures as follows:

"D-9A".

Original

Expense Account

International Union Mine, Mill and Smelter Workers

District No. 7 Period Ending Aug. 31, 1946

Transportation

Date	From—To	Amount	Exp. Allowance
8-16	Kellogg—Pacso	10.40	6.00
17	in Pasco	2.08	6.00
18	in Pasco	2.04	6.00
19	in Pasco	2.52	6.00
20	Pasco—Ione	10.84	6.00
21	Ione—Spokane	3.68	6.00
22	Spokane—Kellogg	3.24	1.25
23	Kellogg—Ione	6.80	6.00
24	In Ione		6.00
25	In Ione		6.00
26	Ione—Pasco	10.80	6.00
27	Pasco—Spokane	7.20	6.00
28	Spokane	.88	6.00
29	Spokane—Kellogg	3.20	1.25
30	Local	1.52	
31	Enroute to Yellow Pine		6.00
	Total	65.20	80.50

Note:—All accounts must be rendered semi-monthly to the Secretary-Treasurer.

Pay periods are from the 1st to 15th, inclusive, and from 16th to 30th, or 31st, inclusive.

Expense accounts must be filled in each day.

Receipts for all expenditures listed must be sent in with expense account.

If receipts are not received, no payment will be made.

Only ordinary expenses will be reimbursed.

No receipts are necessary for transportation by auto (4¢ a mile.)

Telephone and telegraph bills must be listed in detail on back of this sheet. If this is not done, the bills will not be paid. Phone calls from pay booths must be so listed.

Expense allowance will not be allowed unless employee is away from home station over night.

No staff member may incur expenses beyond those allowed by International Union.

Fill in columns at right.

Signature (S.) George Knott.

Where Check Should be Sent Box 929.

Approved by Kellogg, Idaho.

Amount Due

1.	Salary		178.75
2.	Expense Allowance	78.00	80.50
3.	Transportation		65.20
4.	Hand Bills and Bulletins		
5.	Meetings Promotion Expense		
6.	Postage		
7.	Telephone—Telegraph		
8.	Miscellaneous		
	Total		321.95

Deductions

1.	Social Security—State Unemp. Tax	1.79
2.	Advances	
3.	War Bonds	
4.	American-Allied War Relief	
5.	Government Tax	2.70
6.	Group Insurance	
	Total Deductions	

* * *

Mr. McTernan:
No further questions, your Honor.

The Court:
Any re-direct?

Mr. Broaddus:
Yes, sir.

On Re-Direct Examination.

Questions by Mr. Broaddus:

Q. Mr. Knott, in your previous testimony did you state the means by which you arrived in the Bayard-Silver City area for the meeting between you, the defendant Jencks, Morris Graham, and Orville Larson?

A. I don't believe so.

Q. How did you travel to that meeting, what means of transportation?

A. Automobile was always used.

Q. Whose automobile did you travel in?

A. Frankly, I don't know. Sometimes, where two people went together, one person would use their car or the other person would use their car. In other words, only one car would go if two people from the International Union were going to the same place.

Q. Well, you and Mr. Larson were from the union, is that correct?

A. That is right.

Q. Do you recall whose car it was that you used?

A. No, I don't.

Q. How did Morris Graham travel, if you know?

A. In his own car.

Q. He didn't travel with you and Mr. Larson?

A. No.

Q. How long did you stay in the Bayard-Silver City area?

A. I think just that one afternoon. We left that evening and came back to Arizona.

Q. You are familiar with these vouchers, are you not, Mr. Knott?

A. Yes, I am.

Q. You are familiar with the part of the voucher that states that "Expense allowance will not be allowed unless employee is away from home station over night"?

A. Yes.

Q. Did you submit a voucher for your travel to Bayard, New Mexico, in connection with this meeting between you, Jencks, Morris Graham, and Arville Larson?

A. I would assume so.

Q. Does it appear on any of these that we have here?

A. No, it doesn't.

Q. If you had travelled in Larson's car would you have submitted a voucher for your expense in that connection?

A. Not for mileage, no, sir.

Q. If you were not there overnight in Bayard, New Mexico, would you have been able to submit a voucher and obtain reimbursement?

A. No.

Q. Is it your testimony that you were not there overnight?

A. To the best of my recollection we left the same day.

Q. Mr. Knott, after having your memory refreshed by seeing these vouchers and these exhibits that were introduced in evidence here, do you have a better recollection as to the date upon which you went to Silver City and met with the defendant Jencks?

A. No, I don't, sir.

Mr. Broaddus:

That is all.

On Re-Cross-Examination.

Questions by Mr. McTernan:

Q. You fixed the earliest date this trip could have been made as September 1, 1946, and the latest date as January 31, 1947, did you not?

A. That is right.

Q. And during that entire period you were in the Coeur d'Alene area, or Canada, or Denver, isn't that right?

A. That is right.

Mr. McTernan:

No further questions.

Mr. Broaddus:

That is all.

(Witness excused).

• • • • • • • •

Mr. McTernan:

Your Honor, so the record will be straight, we have not nor will we offer Defendant's Exhibits 4 and 5-for-identification. They were simply used for the preliminary examination of the witness Knott.

JAMES E. PETERSON, a witness for the Government, having been duly sworn, in answer to qualifications propounded, testified as follows:

On Direct Examination.

Questions by Mr. Herring:

Q. What is your name?

A. My name is James E. Peterson.

Q. Where do you live, Mr. Peterson?

A. I live in Ray, Arizona.

Q. What is your occupation?

A. Supervisor of Training for the Ray Mines Division of Kennecott Copper Corporation.

Q. Mr. Peterson, were you ever a member of the Communist Party?

A. Yes, I was.

Q. When did you join the Communist Party?

A. I joined the Communist Party in 1942.

Q. Where were you living at that time?

A. I was living at 119 Oak Street, Midvale, Utah.

Q. And what was your occuaption at that time?

A. At that time I was employed as a miner underground for the U. S. Smelting and Refining Company at Lark, Utah.

Q. How long did you remain in the Communist Party?

A. I remained a member of the Communist Party until 1949.

Q. Do you recall about when you left the Party in 1949?

A. Yes, either in late April or early May.

Q. Do you know the defendant, Clinton Jencks?

A. Yes, I do.

Q. Is this him sitting at the table behind Mr. Witt? (Indicating.)

A. Yes, that is Mr. Jencks?

Q. How long have you known Mr. Jencks?

A. I have known Mr. Jencks since 1947.

Q. Were you a member of the Communist Party in 1947?

A. I was a member of the Communist Party in 1947, that is correct.

Q. Did you hold any office in the Party at that time?

A. In 1947 I was a member of the State Central Committee in the State of Utah.

Q. Was that of the Communist Party?

A. Of the Communist Party.

Q. What were your duties in that connection?

A. I was in charge of the labor on the State Central Committee.

Q. Did you at that time, early in 1947, know of your own knowledge whether or not Clinton Jencks was a member of the Communist Party?

Mr. McTernan:

We objection to this on the ground it calls for a opinion and conclusion. We further object to any evidence dealing with Mr. Jencks' alleged membership in the Communist Party in the remote period herein indicated for all the reasons heretofore stated.

The Court:

Objection overruled, if you know of your own personal knowledge that the defendant at that time was a member of the Communist Party.

A. At that time I knew that Jencks was a member of the Communist Party.

Q. Were you a member of any other organization at that time?

A. I was International Representative for the International Union of Mine, Mill and Smelter Workers.

Q. Is that union commonly known as "Mine-Mill"?

A. Commonly known a s"Mine-Mill."

Q. Where, to the best of your recollection, did you first meet Clinton Jencks?

A. To the best of my recollection I first met Clinton Jencks in 1947 around May or June at a wage conference that was called by the International Union of Mine, Mill and Smelter Workers.

Q. Where was that wage conference held?

A. That wage conference was held in the Gold Room of the Newhouse Hotel in Salt Lake City, Utah.

Q. Are you able, Mr. Peterson, to specify more exactly the date that that meeting was held? You said May or June, I believe?

A. Well, I can't state to the exact date but I do know that it was just prior to the passage of the Labor and Management Relations Act of 1947.

Q. Was that commonly known as the "Taft-Hartley Act"?

A. Known as the Taft-Hartley Act, right.

Q. And I understand you set the time in relation to the passage of that Act?

A. That is correct.

Q. You know when the Act was passed?

A. I don't know the exact date the Act was passed. I do know that I was commissioned at the wage conference to call Senator Elbert Thomas on the telephone—he was in Geneva, Switzerland—to try and get him to come back to America to cast his vote against the passage of the Taft-Hartley Act. I was instructed to tell him that Senator Wagner of New York would get out of his sick bed and come down and cast his vote if Senator Thomas would come back.

Q. That is the way you recall it?

A. Well, it is the only transatlantic telephone call I ever made and that is why I remember it.

Q. Was Clinton Jencks present at this wage conference?

A. Clinton Jencks was present at this wage conference.

Q. Have you ever attended a Communist meeting with Clinton Jencks?

Mr. McTernan:

I object to this on the ground it calls for an opinion and conclusion.

The Court:

Well, if he knows of his own knowledge that he attended a Communist meeting and the defendant Jencks was there, he may answer. Objection overruled.

A. I have attended Communist meetings with Clinton Jencks.

Q. When was the first one that you recall?

A. The first Communist meeting that I attended with Clinton Jencks was held in a hotel room in the Hotel Utah at the same time that the International Union of Mine, Mill and Smelter Workers held its wage conference in the Hotel Newhouse in Salt Lake City, Utah.

Mr. McTernan:

Your Honor, for the record, we move to strike this testimony dealing with 1947 on all the grounds heretofore urged.

The Court:

Objection overruled.

Q. Do I understand from your testimony that this Communist Party meeting you speak of was held at the same time that this wage conference was held?

A. That is correct.

Q. Was Clinton Jencks present at that meeting?

A. Clinton Jencks was present at that meeting.

Q. Do you recall anyone else being present?

A. Yes, I do.

Q. Could you tell us—

The Court:

You are talking about the Communist meeting or the wage meeting?

The Witness:

I am talking about the Communist meeting that was held in the evening at the Hotel Utah.

The Court:

All right.

Q. Could you tell us, as best you recall, who was present at that Communist meeting other than Clinton Jencks?

A. There were I judge about ten or twelve people present in the hotel room at the meeting. Among them was Maurice Travis—

Q. Had you known Maurice Travis before?

A. Yes. I had known Maurice Travis before.

Q. Did you know of your own knowledge whether or not he was a member of the Communist Party?

A. Yes, I know he is a member of the Communist Party.

Q. All right, who else was present?

A. Maurice Travis; Chase Powers, who was a board member from District 7 for the International Union of Mine, Mill and Smelter Workers; Howard Lee, an International representative from the Mine, Mill and Smelter Workers; Rudy Hansen, an International Representative; Clinton Jencks, who at that time was the business agent for the Silver City, New Mexico area, an amalgamated local down there; Howard Lee, who was an International Representative; Bill Gately.

Q. Bill Gately?

A. Bill Gately, an International Representative; and others.

Q. You don't recall who the others were?

A. I don't recall who all of them were. And I was there.

Q. You were there?

A. I was there.

Q. You were a member of the Communist Party at that time?

A. I was a member of the Communist Party at that time.

Q. If you know of your own knowledge, was that meeting confined to Communist Party members only?

Mr. McTernan:

I object to this on the ground it calls for the witness' opinion and conclusion.

The Court:

Well, if he knows.

Mr. McTernan:

He can't even identify who was there. I don't see how he could possibly know.

Mr. Herring:

The witness would know whether or not he knew rather than Mr. McTernan.

Mr. McTernan:

I submit we are entitled to have a foundation for these statements. We should not have these conclusions just because he knows.

The Court:

Just state whether or not you have personal knowledge that those whose names you mentioned were members of the Communist Party.

Q. Those whose names you mentioned, do you know whether they were members of the Communist Party?

A. Those whose names I have mentioned were members of the Communist Party.

Q. Including Jencks?

A. Including Jencks.

Q. Could anyone else have attended that meeting unless he was a member of the Communist Party?

Mr. McTernan:

Objection. It calls for an opinion and conclusion.

The Court:

If he knows what the rules and regulations of the Communist Party were.

Mr. McTernan:

But there is no foundation for it. He is just spinning these conclusions from the top of his head. We are entitled to know what his basis of this conclusion is.

Mr. Herring:

He was a nofficer of the Party and as such I am asking him if he knows of his own knowledge.

The Court:

Objection overruled.

A. To my knowledge there was nobody there except members of the Communist Party, and those members were also people within the International Union of Mine, Mill and Smelter Workers, and I am sure there was others. Even Communists outside the Mine-Mill were excluded from that meeting on the ground that—

Mr. McTernan:

I don't know what relevancy this has.

The Court:

Yes, objection sustained to that part of it.

Q. Do you recall whether or not at that Communist meeting Clinton Jencks said anything?

A. Yes, I do. I can recall a number of things that were said by different people.

Q. Let me ask you this; how did you address each other at that meeting?

A. Well, sometimes as "Comrades", sometimes as "Pete", somtimes as "Bill", sometimes as "Travis."

Q. I see. All right, do you recall what was said by Jencks or others who were there at that time, if you can identify them?

The Witness:

Well, is it permissible for me to lay the foundation of the meeting, the purpose of it, in order to say the role that each took?

The Court:

No, that is not the question that is being asked. The question is what Jencks said and others that were in his presence and hearing.

Q. Let me ask this question; do you know of your own knowledge the purpose for which the meeting was called?

Mr. McTernan:

Objection, Your Honor, on the ground it calls for his opinion and conclusion.

The Court:

Objection overruled, if he knows.

Mr. McTernan:

There is no basis for his knowledge shown in the record.

The Court:

If he knows the Court will permit him to answer.

The Witness:

Did you say the objection was overruled?

The Court:

Yes, you may answer if you know personally.

The Witness:

Sure I know. Even if it is out of the top of my head.

The Court:

Just answer the question.

Q. Do you know why the meeting was called, why the Communist meeting was called?

A. Yes, for the Party members within the union to discuss strategy in regard to a number of things, in regard to the problem of secession that was taking place within the International Union of Mine, Mill and Smelter Workers because of differences between the so-called left wing and right wing elements in the union. Also, to discuss strategy in regard to the passage or probable passage of the enactment of the Taft-Hartley law.

Q. Who presided at that meeting, if you remember?

A. Travis presided at that meeting.

Q. What was said and done at the meeting, as best as you recall, by anyone present, at the time Jencks was there, Comrade Jencks was there?

A. Jencks reported that the Southwest, so far as secession was concerned, was pretty solid; that he wasn't worried about his area being torn by the secession movement that was beginning to take place within the International Union of Mine, Mill and Smelter Workers. Jencks also expressed the opinion that insofar as the Taft-Hartley law was concerned that we should fight it all the way down the line, and we should never agree to the Taft-Hartley law, and especially to that part within the law referring to signing of a noncommunist affidavit.

Q. Do you remember anything else that was said at the meeting, specifically?

A. I reported in this meeting on the position and the complexities within the Utah situation in Mine-Mill.

Q. At that time, I believe you testified, you were an officer in the Communist Party assigned to labor, is that right?

A. That is correct.

Q. You were then an officer in the union also?

A. Not an officer in the union. I was an International Representative.

Q. I am sorry. Were you an employee of the union?

A. I was an employee of the union that is correct.

Q. Who hired you as an employee of the union?

A. Orville Larson is the man who gave me a job as an International Representative.

Q. Did you attend any other Communist meetings with the defendant Clinton Jencks?

Mr. McTernan:

I object to this as calling for his opinion and conclusion without any foundation.

The Court:

Objection overruled.

A. Yes, I attended two other Communist meetings that I recall.

Q. When was the next one after this meeting in May or June of 1947, as best as you recall?

A. Either in the winter of 1947, or '48; late '47 or early '48. I don't remember exactly except that I know it was cold.

Q. Do you remember where that meeting was held?

A. That meeting was a Rocky Mountain Convention of the Communist Party. I attended that convention as a delegate from Utah.

Q. Delegate of what?

A. Of the Communist Party from Utah.

Q. And where was the Communist convention held?

A. It was held in Denver, Colorado. It was held in a hall in Denver, Colorado. I don't know the name of the hall.

Q. Who presided at that Communist convention, if you recall?

A. Arthur Barry presided at that convention, and also in attendance at that convention—

Mr. McTernan:

This is not called for by the question, Your Honor. We would like to have this witness' testimony developed by questions and answers so we will have an opportunity to object.

The Court:

Yes.

Q. Was Clinton Jencks at that Communist convention?

Mr. McTernan:

I object to this as leading and suggestive.

The Court:

Objection overruled.

A. Clinton Jencks was in attendance at that convention.

Q. Who was Arthur Barry?

A. Director of the Rocky Mountain Region for the Communist Party.

Q. Do you recall who else was present at the convention?

A. Not everybody, because most of them were strangers to me. I do recall some people, however.

Q. Who do you recall?

A. The people that I journeyed to there in an automobile from Salt Lake City. I recall that Graham Dolan

was there. I recall that his wife, Eunice Dolan, was there. I had known these people previously. I journeyed there in conjunction with four other people. In the car going to Denver were Joseph Douglas, and an elderly negro fellow; a young woman who belonged to the professional branch in Salt Lake City, whose first name was June. I don't know her last name. Her husband was called "Jamey", and I do know he drove a cross-country van. And another single woman whom I hadn't known before also accompanied us.

Q. Did you know the name of this single woman who accompanied you?

A. No, I don't. She was from the professional branch in Salt Lake.

Q. Now, at the convention itself who do you recall as having been there?

A. As having been there?

Q. Yes, besides the people you have named.

A. Betty Grayson, or Betty Gannet.

Q. Which is her name, do you know?

A. Well, I don't know, I have known her by both names.

Q. You know who she is?

A. To the best of my knowledge she was one of the top Communist people in America, and the head of the educational program of the Party.

Q. Who else do you remember being at that convention?

A. A man by the name of Hank Holt was there, from Arizona. I had met him previously in Arizona.

Q. Who else?

A. The people at whose home I stayed were also there. I don't know their name.

Q. You don't know their name?

A. No, I don't. I stayed there overnight, that's all. I have forgotten their name.

Q. Who was Hank Holt?

A. Well, Hank Holt, I don't know too much about Hank Holt except that I attended a Party meeting in a Globe, Arizona hotel room with Hank Holt early in 1947 when District Two of the International Union of Mine, Mill and Smelter Workers held a staff meeting in Globe, Arizona, and later we met in a hotel room in Globe.

Q. Was he connected with the union?

A. Hank Holt was a delegate, at the same time Hank Holt was a delegate to a Mine-Mill CIO Political Action Committee meeting held for the people within Mine-Mill in the state of Arizona, and this Political Action Committee meeting was held in the Miami miners union hall.

Mr. McTernan:

Now that we have all this very interesting story, I move to strike it on the ground that it is hearsay in connection with the defendant Jencks.

The Court:

The Court think that motion is good.

Mr. Herring:

I would like for counsel to state what portion of it he objects to.

The Court:

This part telling of this meeting over in Arizona where there is no evidence that the defendant was present. Objection sustained. The jury will disregard that part of his testimony.

Q. Did you know of your own knowledge that Hank Holt was a member of the Communist Party?

Mr. McTernan:
Objection, Your Honor, on the ground it is immaterial and irrelevant.

The Court:
The Court thinks so. Objection sustained.

Q. Was Hank Holt present at the Communist convention of which you spoke about?

Mr. McTernan:
I object to this on the ground it has been asked and answered.

The Court:
That objection is overruled. You are talking about the meeting in Denver at which the defendant Jencks was present?

Mr. Herring:
Yes, sir.

The Court:
Objection overruled.

Q. Was Hank Holt present at the Rocky Mountain Communist Convention at which Jencks was present?
A. That is correct.
Q. That was in Denver, Colorado?
A. In Denver, Colorado.
Q. And did you know of your own knowledge at that time that Hank Holt was a member of the Communist Party?

Mr. McTernan:

Objection, on the ground it calls for an opinion and conclusion.

The Court:

If he was present at that meeting, if he testified he was, the Court will overrule that objection at this time.

A. Hank Holt to the best of my knowledge was a member of the Communist Party.

Q. Do you recall attending any other Communist meetings with Clinton Jencks?

Mr. McTernan:

I object on the ground it assumes facts not in evidence and calls for his opinion and conclusion.

The Court:

Objection overruled.

Q. Let me ask one other question about this Communist convention in Denver. Do you recall any conversations that took place at which Jencks was present or any action taken by the convention in his presence?

A. Yes. Jencks, Graham Dolan, Hank Holt, and I, were put on a committee, placed on a committee. This was to be a continuing committee. Jencks was located in New Mexico; Hank Holt was located in Arizona; Dolan was located in Denver; and I was located in the Bingham County area in Utah. At all of these four locations there are a lot of the Mexican-American people—

Mr. McTernan:

I don't understand what this has to do with the question.

The Court:

You were asked for the conversation either with the defendant or in his presence.

Q. Do you remember any conversation that took place at the Communist convention where Jencks was present or at any meeting of this committee which you speak of?

Mr. McTernan:

May we have one question at a time?

The Court:

I think that would be better procedure.

Q. All right; can you remember any conversation at the Communist convention?

A. I really don't know how to proceed. I can't hardly tell how to recount a conversation that I took part in without pointing out also what other people said in this committee.

Q. You can testify as to anything anyone said when Jencks was present, to the best of your recollection. You don't have to say it word for word, just as best as you recall?

A. Arthur Barry made a speech. I was there. Jencks was present also. Now, can I say what Arthur Barry said?

Q. You may.

A. Arthur Barry told us that the Government had stepped up its program to suppress the people's movement in America, that more and more organizations and people were being put on the subversive list kept by the Attorney General; that we, as members of the Communist Party, must do everything that we could to resist these tendencies.

Q. What else did he or anyone else say at this convention, or you, if you said anything?

A. Well, I said that I agreed with the idea of a committee to rpomote interest in the Mexican-American people in the four areas mentioned, to bring them into the Party, to bring them into the activities within the labor movement, and to help provide a strong broad foundation upon which to carry on the whole program.

Q. Do you remember whether or not the defendant Jencks said anything at that convention, and if so, what?

A. I can't remember what Jencks said specifically.

Q. Did he say anything, do you recall that?

A. I have never seen any time when he didn't.

Q. Well, Mr. Peterson, let's go back now. Did you ever attend another or any other Communist meeting at which Clinton Jencks was present other than the two you testified about?

A. Yes, I attended another one in Denver, Colorado.

Q. When was that?

A. Again this was in May or June of 1948.

Q. Can you fix it anymore definitely for us?

A. Well, the exact time was the day that Henry Wallace spoke at a political rally in the Denver City Auditorium.

Q. You remember what day it was.

A. I don't remember what day it was?

Q. Where was the Communist meeting held?

A. Well, the Communist meeting was held in a Denver hotel room.

Q. Do you remember which hotel?

A. I don't know the name of the hotel, no. I am not familiar with Denver. I have only been there a couple of times.

Q. Was the defendant Clinton Jencks present?

A. Clinton Jencks was present, that is correct.

Q. Who else was present?

A. You are talking about the Communist meeting at the hotel?

Q. Talking about the Communist meeting at the hotel room.

A. I was present. Jencks was present. Travis was present. Sylvania Schnattaicher was present. Irving Ditcher was present; I remember it was the first time I ever met him. Powers was present. Chase Powers.

Q. Chase Powers?

A. Yes, the same board member from District 7. Fourteen or fifteen of us. I don't remember all of them. Graham Dolan was present.

Q. Graham Dolan also?

A. Graham Dolan was present; I remember that.

Q. Who presided at that Communist meeting?

A. Travis.

Q. I may have already asked this question, but who is Travis?

A. Well, Maurice Travis is Secretary-Treasurer of the International Union of Mine, Mill and Smelter Workers.

Q. Does he occupy that position now?

A. To the best of my knowledge he occupies that position now.

Q. Do you know of your own knowledge whether or not at that time he was a Communist?

A. To the best of my knowledge Travis was a member of the Communist Party.

Q. You say to the best of your knowledge; you were an officer in the Communist Party, were you not?

A. That is right. I was an officer from the Utah State Central Committee.

Q. Well, did you know whether or not he was a Communist?

A. Yes, I know he was a Communist. I attended Communist meeting with him.

Q. Do you recall, Mr. Peterson, what was said at that Communist meeting in the hotel room there in Denver, Colorado?

Mr. McTernan:

I object on the ground it is immaterial and irrelevant as to any testimony dealing with the period in 1948.

The Court:

Objection overruled, if Jencks was present.

Mr. McTernan:

I want to be sure that our objection on this whole testimony is clear.

The Court:

Objection overruled. Let the record so show.

A. Yes, I remember.

Q. Tell us, if you can, the best you recall, what was said and who said it?

A. Irving Dichter made a report on the Die Casting Division and said that as soon as this meeting was over, and as soon as the wage conference of the International Union was concluded, that we had all better get back to our districts and really prepare to fight against secession of the workers from the International Union. I personally reported on Utah, that we had better get back as soon as this meeting was over and prevent Wesley Madill from seceding the Garfield smelter of the A. S. & R. Refinery from the International Union; also, to prevent, if possible, the U. S. Mining, Smelting and Refining Company locals from getting out of the union. Jencks reported that he had no fear of secession down in New Mexico. Travis cautioned us that we should concentrate our main efforts on

holding the Kennecott locals and the A. S. & R. locals because these were the biggest bargaining councils within the International Union of Mine, Mill and Smelter Workers.

Q. Do you recall anything else that was said at that Communist meeting?

A. Well, we had a conversation again about the Taft-Hartley Law. We were told that it was the position of the Party not to sign, never to sign the affidavit. We talked about the Progressive Party movement. I don't recall what was said in particular.

Q. When did you testify that you left the Communist Party, Mr. Peterson?

A. Testified to whom?

Q. To me here in Court. When did you testify that you left the Communist Party?

A. I left the Communist Party in 1949.

Q. I believe that was the time you testified earlier in the testimony that you had left the Communist Party in 1949?

A. That is right, in either late April or early May, right close to that some place.

Q. When did you first furnish information to the United States Government about your Communist activities?

A. About three months ago.

Q. Did the Government solicit that or did you volunteer it?

A. No. As a matter of fact, I volunterred after reading about—

Mr. McTernan:

I don't know what this has to do with this case.

The Court:

No, objection sustained.

Mr. Herring:
Pass the witness.

(At this point a recess was taken from 12:00 o'clock Noon until 2:00 o'clock P. M. the same day, at which time proceedings were resumed as follows):

Mr. Herring:
Your Honor, I would like to ask this witness one more question.

The Court:
All right.

On Direct Examination Resumed.

Questions by Mr. Herring:
Q. Mr. Peterson, during the time that you were a member of the Communist Party state whether or not you made that fact known generally among the public?

Mr. McTernan:
I object to this on the ground that it involves something not connected with the defendant Jencks.

The Court:
The Court don't quite see the materiality of that.

Mr. Herring:
You want me to state the materiality?

The Court:
Yes.

Mr. Herring:

To indicate that members of the Communist Party didn't make that fact known and would conceal it.

Mr. McTernan:

The fact that a hundred thousand other peole might have done that same thing doesn't make it relevant.

The Court:

Objection sustained.

Q. You know what the policy of the Communist Party was, as a member and an officer of the Communist Party, as to whether the members should make their identity known to the public?

Mr. McTernan:

Same objection.

The Court:

If you know of your own knowledge, you can answer.

The Witness:

Will you repeat the question?

(The reporter read the question).

A. The policy of the Party, so far as a member making known his identity as an open Communist, was left up to the discussion and decision of the State Central Committee and the branches.

Q. All right, were you an officer of the State Central Committee?

A. I was.

Q. What was the policy of the State Central Committee where you were?

Mr. McTernan:
I object to this, Your Honor, on the ground it has been asked and answered.

The Court:
Objection overruled.

A. It varied with the individual. It varied with the individual Communist.
Q. Well, with reference to you?

Mr. McTernan:
I object to this on the ground it has no bearing here.

The Court:
Yes, the Court sustains the objection to that.

Mr. Herring:
You may have the witness.

Mr. McTernan:
Your Honor, we are not prepared to cross-examine this witness. We are not prepared to go into any attempt at cross-examination. This is the third or fourth surprise witness we have had here. We have not been able to find out from the prosecution just what overt acts they rely on to prove membership or affiliation. They have gone through the whole Rocky Mountain area and the country, as far west as the Pacific ocean, to find witnesses to come in here and testify to things going as far back as 1946. We have been working day and night attempting to keep up with this testimony. We have attempted to protect the interests of Mr. Jencks as best we can. We are simply at a point where we could not have been prepared for this witness and we are not prepared for

this witness. We have a very good reason to believe there is important information to be obtained, important reports and records to be consulted. They are not here. Most of them are in Denver. Some of them are in Utah. And it just takes time, Your Honor, to get these things and to prepare for cross-examination; and we, therefore, ask you to permit us to defer the cross-examination of this witness until we can have a reasonable time to prepare it.

The Court:

That motion and request is overruled and denied, although at a later time, if it is important and material, the Court will permit you to recall him for further re-cross.

Mr. McTernan:

Will you permit us to recall him for cross-examination at such time as we are ready?

The Court:

That will be a matter for discretion of the Court. He has given you a reasonable time on some of these witnesses that you said you would recall, and he will permit you to recall this witness at a later time, but the Court will be the judge of that.

Mr. McTernan:

We would like to recall him on Monday. This is Thursday.

The Court:

Well, that might be possible, especially if we recess over Saturday, but you will proceed with the cross-examination at this time.

Mr. Williams:

Your Honor, I think in the interest of justice if there are any witnesses recalled they should be cross-examined about surprise matters and documentary evidence that they might not have here.

The Court:

Yes.

Mr. Williams:

He could proceed with his examination as far as he could go now. It is no different from any other witness.

The Court:

That is exactly what the Court has just tried to say, that counsel can go as far as he can now with his cross-examination and then at a later date, at the discretion of the Court, if you want to recall him for further cross-examination that is material and important the Court will permit you to do so.

Mr. McTernan:

Your Honor, there isn't a word in this witness' testimony that isn't a surprise. His very appearance is a surprise. Can you see anything in the indictment, Your Honor, absent of the bill of particulars, that would give us even a hint that this witness would have been called? Can you see anything in the indictment, which charges falsifying with reference to membership in 1950, any hint that we would have to face a witness that would go back as far as this witness has gone?

The Court:

The Court has ruled. The ruling is that you can go as far as you can, and then on anything else, if it is material, the Court will permit you to cross-examine him later.

On Cross-Examination.

Questions by Mr. McTernan:

Q. Where do you live now?

A. I live in Ray, Arizona.

Q. And what is your street address?

A. 1406 Constance.

Q. And what is your position—withdraw that. Where are you employed in Ray, Arizona?

A. I am employed by the Kennecott Copper Corporation.

Q. And in what capacity?

A. I am Supervisor of Training for the Ray Mines Division of the Kennecott Copper Corporation.

Q. How long have you held that position?

A. Since the first day of July of last year.

Q. July 1, 1953?

A. That is correct.

Q. And where were you employed before that?

A. Before then I was employed by Kennecott Copper Corporation in Bingham Canyon, Utah.

Q. And when were you first employed by Kennecott in Bingham Canyon, Utah?

A. I was employed at Bingham November 21, 1949. Copper?

A. That is correct.

Q. What was your employment before you went with Kennecott?

A. I was self-employed from May until November.

Q. Where?

A. I operated a little drive-in located in West Jordan, Utah.

Q. Is that near Salt Lake City?

A. It is about fourteen miles distance from Salt Lake City.

Q. South?

A. It is south of Salt Lake City.

Q. Where were you employed before you ran this drive-in?

A. I was employed by the International Union of Mine, Mill and Smelter Workers.

Q. And you terminated your connection with them in May of '49?

A. Either the latter part of April or the first part of May.

Q. When did you start work with Mine-Mill?

A. In February of 1947.

Q. Were you put on the payroll of Mine-Mill as an International Representative in February, 1947?

A. That is correct.

Q. Did you hold that position continuously until 1949?

A. That is correct.

Q. And where were you employed before that?

A. Before that I was employed by the Bingham City Police Department and attended the University of Utah at the same time.

Q. And how long were you with the Bingham City Police Department?

A. A period of about six months.

Q. In the year 1946?

A. That is correct. I started my employment there in 1946.

Q. And before then, before you were with the Police Department there, where were you?

A. I was attending school under the G. I. Bill at the University of Utah. During that time I held several jobs on the side.

Q. Just typical jobs that college students hold? I don't want to go in detail. That generally describes them?

A. Generally, yes.

Q. Now, you say you were a member of the Communist Party. When did you join that organization?

A. I joined the Communist Party in 1942.

Q. Where?

A. In Midvale, Utah, at Wallace Tolbert's house on Wabash Avenue, just below the G. N. & N. W. railroad tracks.

Q. Did you remain a resident of Midvale, Utah from '42 to the time you went to the University of Utah?

A. Yes. I was a resident of Midvale, Utah, from '42 until after I got out of the Service in '46.

Q. How old were you in 1942?

A. (Hesitates).

Q. Or how old are you now?

A. I am thirty-five years of age.

Q. So you were about twenty-three when you joined the Communist Party?

A. I believe so, somewhere around there.

Q. Now, at that time were you employed?

A. At what time?

Q. When you joined the Communist Party?

A. At the time I joined the Communist Party I was employed as a miner at Lark, Utah, by the U. S. Smelting and Refining Company.

Q. Now, you solicited your employment by Mine-Mill, did you not?

A. That is correct.

Q. You went to Mr. Larson and asked him to employ you?

A. I didn't go to Mr. Larson and ask him to employ me, that is not correct. If I remember correctly, I wrote a letter to Reed Robinson soliciting employment with Mine-Mill.

Q. You remember talking to Mr. Larson before you were employed by Mine-Mill?

A. Yes. Mr. Larson, Arthur Ashby, and Vern Curtice both of whom are International Representatives, or were at that time, came to Bingham, and I saw them while they were at Bingham, and Mr. Larson talked to me about my employment or prospective employment with the International Union of Mine, Mill and Smelter Workers.

Q. And you had told them at that time you wanted to join Mine-Mill—withdraw that. You told Mr. Larson at that time that you wanted employment with Mine-Mill in order to assist them in improving the conditions of workers in Utah, did you not?

A. I don't recall that I said those particular words.

Q. I didn't attempt to put them in quotes. Isn't that the subsance of what you said?

A. I wanted employment with the International Union of Mine, Mill and Smelter Workers, and I told Mr. Larson so, because I was interested in the welfare of the common man.

Q. And you thought you could serve the welfare of the common man, at least so far as the common man in Utah was concerned, by working with Mine-Mill, didn't you?

A. I certainly did.

Q. And you told Mr. Larson that in effect, didn't you?

A. I most probably did.

Q. Wasn't it your recollection that you did?

A. It is my recollection that I did.

Q. At the time that you applied for employment with Mine-Mill were you a member of the Communist Party?

A. Yes, I was a member of the Communist Party at the time I applied for employment.

Q. And you told Mr. Larson when you spoke to him that you were a member of the Communist Party, didn't you?

A. I am not sure whether I did or not.

Q. You recall Mr. Larson telling you that the union wasn't interested in your politics, that they were interested in how effective and good work you could do for the union?

A. I definitely recall Mr. Larson saying he wasn't interested in my politics, so long as I did a good job for the union, that is all he was concerned with.

Q. And what position in the union did he hold at the time?

A. At that time Orville Larson was Board Member from District Two.

Q. By "board member" you mean a member of the Executive Board of the International Union?

A. Right.

Q. A member of the International Union Executive Board?

A. That is correct.

Q. Now, you are familiar with Salt Lake City, aren't you?

A. Fairly familiar with it, yes.

Q. Now, the Newhouse Hotel is situated on Main Street in Salt Lake, isn't it?

A. That is correct.

Q. And toward the southern end, that is, the southern end of the central part of the town, about across the street from the Postoffice, in the neighborhood?

A. It is just south of the Federal Building.

Q. Or the Postoffice?

A. That is correct.

Q. Across the street?

A. Across the street.

Q. You remember a hotel called the "Temple Square Hotel"?

A. I do.

Q. That is on Temple Street?

A. That is right across from the Temple grounds.

Q. It is on West South Temple, is it not?

A. That is correct.

Q. On the West side of Main Street, I mean, on that portion of Temple Street West of Main Street?

A. That is correct also.

Q. In the first block West of Main, in the first block of Temple west of Main, right?

A. That is correct.

Q. Then across the street from the Temple Square Hotel are the grounds of the Mormon Temple and other buildings there, right?

A. Yes.

Q. Now, going east across Main and on the north of Temple is the Hotel Utah, right?

A. Come once again?

Q. If we were to go across Main Street from the Mormon Temple grounds to the northeast corner of Temple and Main, that would be the location of the Hotel Utah, would it not?

A. I think you are confused. In order to get to the Hotel Utah from Temple Square—

Q. I didn't say that. I said, across Main Street from the Mormon Temple grounds is the Hotel Utah, is it not, on the northeast croner of Temple and Main?

A. That is correct.

Q. Now, the Hotel Utah is the largest and most expensive hotel in Salt Lake City, isn't it?

A. I don't know if it is the most expensive or not. I believe it is the largest.

Q. Is that not regarded as an exclusive hotel?

A. I don't know what you mean by the word "exclusive".

Q. Well, are you familiar with the designation of "Class A" hotel?

A. No, I am not sure what a "Class A" hotel is either.

Q. Have you ever stayed at the Hotel Utah?

A. I have never stayed at the Hotel Utah.

Q. Would it be accurate to say that working people never stay at the Hotel Utah?

A. I believe that would be accurate.

Q. The by and large well-to-do people stay at the Hotel Utah, isn't that so?

A. I believe that is true too.

Q. Now, you say that you attended a meeting with some Communists at the Hotel Utah back there in June of '47?

A. I didn't say it was June. I said it was May or June of '47. I did attend a meeting of Communists in a hotel room in the Hotel Utah at the time the wage conference took place.

Q. Do you remember what the number of the room was?

A. No, I do not.

Q. Do you know whose room it was?

A. No, I don't know that either.

Q. Who was in charge of this meeting?

A. Travis was in charge of the meeting.

Q. Was it Travis's room?

A. I don't know.

Q. Was it a hotel room in which people sleep overnight, or was it some other kind of room?

A. It was a hotel room where people sleep. At least, there was a bed in it.

Q. Do you know who was staying in the room?

A. I don't know whose room it was.

Q. Was it the room of anyone of the people at that meeting?

A. I don't know.

Q. You have no idea?

A. I do have an idea that it must have been the room of one of the people who were in that room.

Q. Do you know which one?

A. No, I don't.

Q. Do you know which one it must have been?

A. I don't know which one it must have been either.

Q. Can you remember the names of other people who were there, other than the ones you have mentioned?

A. No, I cannot.

Q. Did the Mine-Mill people normally stay at the Hotel Utah when they came to town?

A. No, they didn't normally. The Mine-Mill people stayed at several other hotels.

Q. The Newhouse?

A. Some of them at the Newhouse.

Q. The Temple Square?

A. Some of them stayed there, that is true.

Q. You never knew of the Mine-Mill representatives staying at the Hotel Utah, did you?

A. No, that is true.

Q. Now, the Mine-Mill union was very active in its opposition to the Taft-Hartley Act, wasn't it?

A. That is correct.

Q. And you and other people on behalf of the union had been conducting activities designed to secure the de-

feat of that legislation for many months before this meeting in May or June of 1947, isn't that right?

A. That is correct.

Q. The union had spent a considerable amount of money in these activities, had it not?

A. I presume that to be correct. I don't know how much money they spent.

Q. They had representatives in Washington working on this matter?

A. It is my understanding that Herman Bloch was in Washington.

Q. He wasn't the only one that was in Washington?

A. I wouldn't know.

Q. Do you know whether the union had both lawyers and officers representing the union in Washington working for the defeat of the Taft-Hartley Act in 1947?

A. I am not aware of where the officers or the attorneys for the Mine-Mill union are located.

Q. I didn't ask you anything about that?

A. I wasn't aware.

Q. Perhaps you misunderstood my question. My question was, do you remember whether the union had attorneys and officers of the union in Washington working for the defeat of this legislation?

A. No.

Q. You don't know that?

A. No.

Q. You know that the union put out a considerable amount of literature on the subject, don't you?

A. That is true.

Q. There were articles in the union paper?

A. That is true.

Q. And there were leaflets?

A. That is true.

Q. And placards?

A. I don't remember any placards.

Q. You don't remember any signs put up in union offices, "Defeat Taft-Hartley Act"?

A. Oh, yes, that is true.

Q. And the union rented radio time, didn't it, to get its message out to the people on the Taft-Hartley Bill?

A. That is also true.

Q. And they tried to get articles in the daily press on this question, isn't that so?

A. In Salt Lake City?

Q. Or wherever you were operating?

A. I don't know that that is particularly true.

Q. You don't remember that?

A. I don't remember.

Q. In any event, this was an activity in which the leadership of the union sought to involve all officers and members all the way down the line, isn't that right?

A. That is true.

Q. And in this activity the union selected the assistance of other unions, did it not?

A. That is true.

Q. As a matter of fact, the official position of organized labor at that time was opposed to the Taft-Hartley Bill, wasn't it?

A. That is correct.

Q. C. I. O. and A. F. of L.?

A. That is correct.

Q. And you were apprised from the union literatur and union paper that the union was working with the other C. I. O. unions to defeat the Taft-Hartley bill, isn't that right?

A. That is right. I was aware of that. That is correct.

Q. And the union at that time was also faced with another problem, wasn't it, about raids on its membership in certain parts of the country?

A. Raids or secession.

Q. Do you recall any references to raids around that time?

A. Yes, I do.

Q. You remember the union's discussion of raids by the shipyard workers against its jurisdiction in the North Atlantic States, particularly Connecticut?

A. I believe at this time of which you are speaking it was called the Progressive Metal Workers Council.

Q. Well, do you recall that the union had a problem which it described as raids by the shipyard workers in '46 and '47?

A. Yes.

Q. In Connecticut?

A. Yes.

Q. In the brass foundry?

A. That is true, I remember that.

Q. And it complained about raids by other unions in other parts of the country, didn't it?

A. That is true.

Q. And there was also talk by the union's leadership of secession on the part of certain of its locals?

A. That is correct.

Q. And the withdrawal, or attempt to withdraw, on the part of certain locals or the leadership of certain locals in connection with or going over to other unions, isn't that right?

A. That is correct.

Q. And this was a union problem on which the union got out a great deal of literature, did it not?

A. That is correct.

Q. And has discussions from national level on down?

A. That is true.

Q. And sought the best of its representatives to convince the membership to stay with Mine-Mill and not to go off with other unions?

A. That is true.

Q. And literature and leaflets were put out on this subject, were they not?

A. That is true.

Q. And you yourself spent a considerable amount of your time in '46 and '47 resisting, either resisting or seeking to forestall the possibility of raids or secession?

A. Not in '46.

Q. In '47?

A. In '47.

Q. Before June?

A. Before June, yes.

Q. And there were articles in the union paper about these matters, were there not?

A. There were.

Q. And one of the things which the union in national meetings of the union gave attention to every time such a meeting was called was the condition of the membership in the various localities on the question of secession or raids, isn't that right?

A. You mean the position of the membership? What do you mean by "the condition of the membership"?

Q. I can change it to "position" if you prefer that word?

A. That is right. That was discussed many times.

Q. And you made reports on your section of the country?

A. That is true, I did.

Q. And the various national representatives all over the country made reports from their area, isn't that right?

A. That is true.

Q. You had reports from the Coeur d'Alene area, didn't you?

A. Yes.

Q. Northern California?

A. You mean San Francisco?

Q. Well, that is the area of San Francisco, in Northern California?

A. That is true.

Q. And Southern California?

A. That is true.

Q. Both in Los Angeles and up there in the mountains?

A. What do you mean, "in the mountains"?

Q. Are you aware that Mine-Mill has locals in the mountains in the eastern part of the Southern California area?

A. I know several different locals, or locals that they have in California. I don't know where they are specifically located.

Q. You remember a reference to Tehachapi?

A. Yes, I remember Tehachapi.

Q. And in the Mojave Desert area?

A. That is where Trona is located?

Q. Trona.

A. I have never been there.

Q. And you also had reports from Tennessee, didn't you, Tennessee Coal & Iron, on this question of raiding and secession?

A. Reports to the International Executive Board?

Q. Yes, at these national meetings?

A. That is true.

Q. Now, in the course of the discussion that was held by the national union in its meetings in the period of '47, isn't it true that the union complained that if the Taft-Hartley Act were passed it would assist parties hostile to the union in raiding the union or bringing about secession movements from the union?

A. That is true, that was the opinion of the union.

And they talked at considerable length as to how the Taf.-Hartley affidavit, or non-Communist affidavit, might be used to further secession movements or raids, isn't that right?

A. Against unions who refused to sign them.

Q. They feared it might be used against Mine-Mill?

A. Provided Mine-Mill didn't sign them.

Q. And the national leadership of Mine-Mill took the position that they were opposed to the Taft-Hartley non-Communist affidavit because they felt it interferred with and infringed the constitutional rights of the union officers and members, did it not?

A. I wish you would rephrase that. I don't entirely agree with that.

Q. I am not asking your opinion. I am asking on what ground the national leadership of Mine-Mill put its opposition to the Taft-Hartley non-Communist affidavit; didn't it base its opposition on the ground I have indicated?

A. They based their opposition on the ground that they refused to sign the affidavit ~~and they~~ were totally against the Taft-Hartley Law itself.

Q. And didn't they say they were against the signing of these affidavits because they regarded those affidavits as an infringement of their constitutional rights?

A. Yes, they said that.

Q. And they said that they were opposed to it because they regarded those affidavits as an infringement of the constitutional rights of all union officers and all union members, isn't that right?

A. They probably said that too.

Q. Now, all the people at this Hotel Utah meeting were representatives of the union, were they not?

A. To the best of my knowledge they were all representatives of Mine-Mill.

Q. And as I gathered from your direct testimony, they discussed the fight against Taft-Hartley, the opposition to the non-Communist affidavit, and the problems of raids and secession, didn't they?

A. That was all discussed at the meeting.

Q. Now, your own personal position at that time was in opposition to the Taft-Hartley Act, wasn't it?

A. It was.

Q. And you had given this thing some thought before you decided on that position?

A. I thought I had given it some thought.

Q. And you were satisfied that your position was a reasonable and sound one at that time?

A. At that time, that is correct.

Q. And you also thought that your position would serve the best interests of the union, didn't you?

A. I did.

Q. And you were satisfied that that was a sound conclusion on your part, weren't you?

A. At that time, that is correct.

Q. And you also at the time were opposed to secession from the national union, weren't you?

A. That is true.

Q. And you gave your best efforts to prevent or forestall secession, didn't you?

A. I did.

Q. And you were satisfied that that was a sound position at the time, weren't you?

A. At the time, that is correct.

Q. Now, when you left the union in 1949 you spoke to Larson about the reasons for your leaving, didn't you?

A. That isn't true.

Q. Did you talk to anybody in the national union about your reasons for leaving?

A. No, I wrote a letter, I think, I am not sure that I wrote a letter of registration to John Clark.

Q. What was the date of that, do you recall?

A. No, I don't know the exact date.

Q. Well, can you recall the month?

A. Yes, it was in the latter part of April and the first part of May.

Q. 1949?

A. 1949.

Q. And is it your recollection that you had no discussions with anyone connected with the national union concerning the reasons why you were leaving Mine-Mill?

A. I discussed it with Al Skinner.

Q. Anyone else?

A. I discussed it with Wallace Talbert.

Q. Anyone else?

A. No.

Q. Are you sure?

A. I am sure.

Q. Wasn't there a meeting of the national union in Utah shortly before you resigned?

A. I am not sure.

Q. Don't you recall having a conversation with Orville Larson in April or May of 1949 concerning your leaving the national union?

A. I did not have any such conversation.

Q. Didn't you tell Larson in May or April of 1949 that you felt it necessary to leave the union because your wife was so opposed to your remaining with it?

A. I talked to Orville Larson previous to this time about the difficulties encountered by me in regard to working for the union and my wife's dislike for the union, but that was not true in 1949, in April or in May.

Q. Well, when did you have that talk with Larson?

A. I don't remember. I talked with Larson a great many times.

Q. Now, in May or June of 1947, where were your headquarters?

A. At one time they were in the Beacon Building, and then later we moved to the Atlas Building, in Salt Lake City. I don't remember the date that we moved.

Q. But your headquarters were in Salt Lake City?

A. Salt Lake City, right.

Q. And would you give me the period of time in which your headquarters were in Salt Lake City?

A. Our headquarters were in Salt Lake City all the time I was in the union.

Q. As International Representative?

A. Yes. I had yet another headquarters out in Bingham.

Q. Bingham is about forty miles from Salt Lake?

A. It is about twenty-seven miles from Salt Lake.

Q. Now, you say that you were in Denver late in the winter of '47—withdraw that. You say you were in Denver in late '47 or early '48?

A. That is correct.

Q. Did you travel on union business at that time?

A. No.

Q. You didn't perform any fuctions for the union in going to Denver on that occasion?

A. I did not.

Q. And the union did not pay for your transportation on that occasion?

A. They didn't pay for my transportation. I was on a salary and got my salary.

Q. Did you take leave from your duties in Salt Lake to go to Denver?

A. You mean did I tell Skinner, who was Regional Director, that I was going?

Q. What I want to know is, did you get permission to go from anybody?

A. Yes, I did. I got permission to go from Skinner.

Q. How long were you gone?

A. Four days, something like that.

Q. And how did you go to Denver?

A. We went to Denver in Joseph Douglas' automobile, which was a two-tone, light-dark blue Studebaker. I don't know what the model was.

Q. I take it you don't know the serial number either?

A. No, I don't know the serial number, but I remember the car.

Q. You didn't go in your own car?

A. No, I didn't go in my own car.

Q. Now, how long did this meeting in Denver that you say you attended at this time last?

A. Two days, I believe.

Q. That is your best recollection, or are you guessing?

A. That is my best recollection.

Q. And you didn't hear Jencks say anything at all during those two days?

A. Oh, yes, I heard Jencks. Whenever you are around Jencks you will hear him talk.

(At this time there was some laughter by the spectators).

The Court:

We won't have any of that in this Court. This is a serious matter so we won't have any laughter by anybody about anything.

Q. In any event, it didn't make enough impression on you to be able to remember?

A. I have been trying about five years to forget and how I am supposed to remember everything in detail.

Q. Well, I didn't ask you to testify. I am just trying to find out what you know. Would you mind answering my question? May it be read?

The Court:
Read the question, Mr. Reporter.

The Reporter (reads):
"Q. In any event, it didn't make enough impression on you to be able to remember?"
A. That isn't the question.
Q. That is the one to which you made your last answer?

The Court:
As to whether or not you remember if Jencks made any talk.

A. Yes, Jencks made a report on his difficulties down in New Mexico.
Q. Well, I direct your attention to your direct examination, in which you said you can't recall what Jencks said; is that the truth when you told it this morning?
A. Certainly it is the truth. I am under oath.
Q. Is it the truth now?
A. Certainly, I am telling the truth.
Q. Then you don't recall what Jencks said?
A. I said that—
Q. Mr. Witness, do you or don't you recall what Jencks said?
A. In particular, no.
Q. Is your statement this morning that you can't recall what Jencks said still the truth?
A. I—
Q. Can you answer that "yes" or "no"?
A. Ask it again. Let me try once more.

Mr. McTernan:

May the question be read?

(The reporter read th equestion).

Q. Answer "yes" or "no", please?

A. Yes.

Q. Now, are you sure there was a meeting, a Communist convention held in Denver in the winter of 1947 and 1948?

A. Yes, I am sure.

Q. And where in Denver was this held?

A. I don't know. At some hall.

Q. You don't remember the name of the hall?

A. I don't remember the name of the hall.

Q. Do you remember the street it was on?

A. I don't remember the street it was on.

Q. Do you remember whether it was an office building?

A. It was not an office building.

Q. Was it in the downtown section of Denver or somewhere else?

A. I am not familiar with the city of Denver so I don't know.

Q. You were able to observe where you were as you went to this place, weren't you?

A. Yes, I can see.

Q. And there was nothing impeding your vision at the time, was there?

A. Nothing impeding my vision, no.

Q. Do you recall ever seeing the downtown section of Denver on that trip?

A. I suppose I did.

Q. And do you know whether the place that you went to was in the downtown section or not?

A. Yes, if the Railway Exchange Building is in the downtown section because we passed it.

Q. Well, as a matter of fact, this place you went to was an office building, wasn't it?

A. It was not an office building. It was a hall.

Q. How many stories were there in this building, approximately, do you know?

A. No, I don't know.

Q. Did it have more than one floor?

A. The hall was on the ground floor.

Q. Well, were there any floors above that?

A. There may have been.

Q. You don't know.

A. I am not sure.

Q. You remember seeing an elevator in the building?

A. No, I don't remember seeing an elevator.

Q. Are you familiar with a building called the Tabor Building in Denver?

A. I have heard of the Tabor Building. I don't remember having seen it.

Q. You know with what connection you have heard of the Tabor Building in Denver?

A. No.

Q. You really don't?

A. No.

Q. You don't know that that was the building where the headquarters of the Mine, Mill and Smelter Workers were?

A. Oh, the headquarters of the Mine, Mill and Smelter Workers was in Chicago at the time I was in Denver.

Q. You mean there were no officers of Mine-Mill in Denver at that time?

A. I don't know that there was.

Q. You don't know that Mine-Mill had offices in the Tabor Building at that time?

A. I certainly don't.

Q. You were connected with Mine-Mill?

A. That is correct. I was International Representative.

Q. You remember that, do you?

A. I remember that.

Q. Now, you remember some speech at this meeting in which the subject and substance of it was that the Government of the United States at the time was repressing and interfering with the civil rights and liberties of the people?

A. Yes, both Arthur Barry and Betty Gannett made speeches.

Q. On that subject?

A. On that subject and others. They talked for a long time, both of them.

Q. This was not a new topic to you at that time, was it?

A. No, it wasn't. I heard it a good many times.

Q. And you had heard it from more than Communist sources, hadn't you?

A. From what other sources?

Q. Hadn't you heard it from sources that were not Communist sources?

A. No.

Q. Were you a reader of the magazie, "The Nation" at that time?

A. No, I don't remember reading "The Nation."

Q. Do you remember reading the magazine called "The New Republic"?

A. Yes, I have seen and read "The New Republic."

Q. And do you recall that at that time "The New Republic" was complaining also about the interference of the civil rights of the people by the Government?

A. I don't remember that.

Q. Do you remember reading about speeches by Senator Lehman and Senator Humphrey about the interference by the Government with the civil rights of the people at about that time?

A. No.

Q. Did you do much reading at that time, Mr. Petersen?

A. As a matter of fact, I didn't. I was working from sixteen to twenty hours a day in the union.

Q. Well, was it your impression that only the Communist in '46 and '47—withdraw that. Is it your impression that only the Communists in '47 and '48 were complaining about the interference with the civil rights of the people by the Government?

A. No, I knew that there were other organizations that were complaining about it. When you ask me to be specific I can't, I don't know.

Q. You said that you made some statement about the idea of promoting the Mexican-American people. Was that a statement that you made in a meeting with Dolan and Jencks?

A. Yes, this was at the same convention.

Q. Well, I was a little confused in your testimony, as to whether this statement you made was made at a committee meeting or at the convention?

A. No, this was in a committee meeting of the convention.

Q. And present were yourself, and Jencks, and Dolan. Anybody else?

A. This fellow from Arizona, Hank Holt.

Q. Was he a Mine-Mill Representative?

A. No not that I know of.

Q. Now, the subject under discussion was the elimination of discrimination against Mexican-American people in the Southwest?

A. That was a part of the subject.

Q. And is that what you talked about?

A. I talked about anti-discrimination and always have.

Q. And that was a policy of the union, was it not?

A. That is right.

Q. As a matter of fact, it was the policy of the union throughout the period of your connection with it?

A. That is true.

Q. And the union carried on many activities in the Southwest designed to eliminate discrimination against the Mexican-American people, isn't that right?

A. That is right, they did.

Q. Including a fight against the so-called double-wage system, isn't that right?

A. That is true.

Q. And the double-wage system was a sytem whereby Anglo-American workers were paid a higher wage for the same job that the Mexican-American workers?

A. That is my understanding of the double-wage system.

Q. And the union was also carrying on activities designed to fight discrimination against Mexican-American people in housing in the mining and smelter villages in the Southwest, isn't that right?

A. To the best of my knowledge, that is true.

Q. And these two things were discussed at this meeting that you had with Dolan and Jencks and Holt, isn't that right?

A. They were two of the things that were discussed?

Q. Another subject that the union conducted activities on in the Southwest during this period was the segregation of Mexican-American workers in certain types of jobs and certain departments, isn't that right?

A. It is my understanding that that is correct. I never worked for the Southwest for the union.

Q. But you are familiar with union literature on this subject?

A. That is true.

Q. And union reports?

A. That is true.

Q. And leaflets?

A. That is true.

Q. And pamhplets?

A. Yes.

Q. And speeches?

A. Yes.

Q. All on this subject?

A. That is right.

Q. On various phases of discrimination against Mexican-American people and workers in the mining and smelting industry in the Southwest?

A. That is true. I have seen lots of literature on it.

Q. And isn't it a fact that you and Jencks at that meeting told these people that you and other representatives of the union were willing to work with the Communist Party and any other organization that would join them in this fight against this kind of discrimination?

A. I don't remember saying that.

Q. Or substantially saying that?

A. I don't remember saying substantially that, but at that time I would have subscribed to that.

Q. That was union position, wasn't it?

A. That was union position. It was also Party position.

Q. And the union would offer its services and activities with any organization and group that would join it in such a program of anti-discrimination, isn't that right?

A. That is true, to the best of my knowledge.

Q. And, as a matter of fact, it was the duty of every union representative in the Southwest to carry out that union policy, wasn't it?

A. That is true.

Q. And, as a matter of fact, there were some problems of discrimination up there in Utah, weren't there?

A. In regard to the Mexican-American people in Bingham?

Q. Well, in the Utah area. You weren't confined to Bingham, were you?

A. Pretty close to Bingham.

Q. You are familiar with conditions around the state in the shops and mines, and so on, where Mine-Mill had membership?

A. Most of the Mexican-American people who live in Utah to my knowledge live in the Bingham area.

Q. What is the problem of discrimination against Mexican-American workers in Bingham?

A. In what respect?

Q. In any respect?

A. They are not discriminated against in Bingham.

Q. Weren't they at that time?

A. No, they all got the same pay.

Q. Wasn't it part of the union's program to see that this kind of condition continued for Mexican-American workers in the Bingham area?

A. The purpose of the union was to fight discrimination.

Q. You say that during this period in '47 and '48 you were working for the union sixteen and twenty hours a day?

A. I certainly was.

Q. And did this include the negotiation of contracts?

A. It did.

Q. And attempts to sign workers up into the union?

A. That is true.

Q. And handle problems of the union members?

A. That is true.

Q. Processing grievances on the job?

A. That is true.

Q. All of this was work done by you in order to serve the membership of the union?

A. That is correct.

Q. In any conceivable way that affected the union's relationship to the members and the members' relationship to the employer, isn't that correct?

A. That is correct.

Q. And you found this to be an arduous and time-consuming experience?

A. It was quite arduous.

Q. And time-consuming?

A. It took quite a bit of time, yes.

Q. Was it your experience that this applied to most of the national representatives of the union at that time?

A. To most of them, yes.

Q. Now, you testified about a Communist meeting that you attended in Denver in May or June of '48. Where were your headquarters at that time, Salt Lake City?

A. Salt Lake City.

Q. And you went to Denver on your own to attend this Communist meeting?

A. The meeting that was held in Denver in May or June of 1948 was a Wage Conference meeting called by the International Union of Mine, Mill and Smelter Workers.

Q. And you went there as a representative of the union, is that right?

A. I did.

Q. Was this the only subject of the Wage Conference, the question of wages?

A. No, it wasn't.

Q. Where was the union conference held?

A. I don't know the name of the building it was held in.

Q. What kind of a building was it?

A. It was a large building, a large hall, in Denver. It was located not too far from the Denver Civic Auditorium.

Q. Was there a large number of the union representatives from the various parts of the country present?

A. There were a good many representatives.

Q. Was Travis there?

A. Travis was there.

Q. And Skinner?

A. He was there.

Q. And Dichter was there?

A. Dichter was there.

Q. And Powers?

A. Powers was there.

Q. Dolan?

A. And Dolan.

Q. And Jencks?

A. Jencks was there.

Q. And Petersen?

A. I was there.

Q. A lot of others?

A. A lot of people, maybe three hundred people.

Q. And do you remember who addressed that meeting?

A. Yes, I do. Henry Wallace, while campaigning for the Progressive Party ticket, came into that meeting.

Q. And do you remember the date on which Henry Wallace was nominated as a candidate of the Progressive Party?

A. No, I don't.

Q. You don't remember that it was over the July 4th weekend in 1948?

A. No, I don't.

Q. In any event, this meeting was considerably before the July 4th weekend, wasn't it?

A. I am not positive as to the date of the meeting. I am positive as to the fact that Henry Wallace addressed the political rally in Denver and appeared in our conference.

Q. When you said on your direct examination that it was held in May or June of '48 you weren't sure, is that right?

A. That it was held in May or June?

Q. Yes?

A. It was in the summertime.

Q. Well, my question to you was, were you sure on your direct examination that it was May or June in 1948; could you answer that "yes" or "no"?

A. To the best of my knowledge it was May or June of 1948.

Q. Do you know whether it was before or after the national conventions of the political parties that nominated their candidates for Presidential office?

A. No, I don't know what date that takes place.

Q. Do you recall—withdraw that. By May or June of 1948 the Taft-Hartley Act had been passed, isn't that right?

A. Yes, it is called the Labor and Management Relations Act of 1947, so I presume it was passed in 1947.

Q. You don't recall when it was passed?

A. Yeah, it was passed shortly after we held the Wage Conference in Salt Lake City.

Q. Senator Thomas didn't come back to vote?

A. No, I understand he got held up by fog.

Q. At least, he couldn't get there and neither could Senator Wagner?

A. That is my understanding.

Q. Now, he did agree to come back, didn't he, when you talked to him?

A. He did, and he told me over the phone that if he could make it he would come back.

Q. And he also told you he would vote against Taft-Hartley, didn't he, if he got back?

A. Well, I don't remember that but I presume that he would have.

Q. That is what you wanted him back there for?

A. Right. That is what we wanted him back for.

Q. Now, one of the things you discussed in this Denver meeting in May or June of '48 was the Taft-Hartley Act, wasn't it?

A. At which meeting?

Q. Well, was there more than one meeting?

A. There was the Wage Conference held by the International Union of Mine, Mill and Smelter Workers, called by the International Union because of the probability of Wesley Madill and Dichter taking Die Casting and A. S. & R. out of the union, and also the Communist Party meeting held in the hotel room. I don't know which one you are talking about.

Q. Well, were they held at different times?

A. No, they were held in conjunction with each other. That is when the Communists within the union itself would get the opportunity to meet, is when they held these sort of things.

Q. Well, did you discuss Taft-Hartley at the Wage Conference?

A. I am pretty sure we did.

Q. Did you discuss union position with reference to compliance with the affidavit and other filing requirements of the Taft-Hartley Act at the Wage Conference?

A. Yes.

Q. And did you discuss the possibility of secession of certain parts of the union at the Wage Conference?

A. Yes.

Q. Did ytu discuss wage and economic demands or positions of the union at the Wage Conference?

A. Yes.

Q. Now, at this thing that you saw was a Communist Party meeting you also discussed the Taft-Hartley Act, didn't you?

A. It is possible we did.

Q. And you discussed non-compliance with the filing requirements of Taft-Hartley, including the filing of the non-communist affidavit?

A. We discussed non-compliance?

Q. Well, you discussed the question of compliance, didn't you?

A. Right.

Q. And you discussed also the question of secession from the union, didn't you?

A. Right.

Q. And you also discussed the wage and other economic positions of the union; didn't you?

A. That is right.

Q. And every one of the people you said attended this thing you called a communist meeting were also officers or international representatives of the union, weren't they?

A. That is correct.

Q. Now, who is this man named Dichter?

A. Irving Dichter.

Q. D-i-c-h-t-e-r?

A. I believe that is the way you spell it.

Q. He gave a report at what you called the Communist meeting on the problem of secession by the Die Casting Division?

A. By the people connected with the board members for the Die Casting Division.

Q. And he gave a report on it?

A. He gave a report as to some locals back East. I am not familiar with those locals back East and what particular business that they are in, or what particular industry they are in.

Q. But in any event he discussed the problem of some secession of some group from the union?

A. That is right, and delivered a real diatribe against this guy Eckert.

Q. And you expressed opposition to Eckert yourself at that meeting, didn't you?

A. I certainly did.

Q. You told him he was acting contrary to the best interests of the union?

A. I told that to whom?

Q. To him?

A. I didn't talk to Eckert.

Q. I mean, in the meeting you said this?

A. I don't recall exactly what I said.

Q. Didn't you denounce him in pretty strong terms at that meeting?

A. He had been denounced more than once at that meeting, and in all probability at a good many other meetings.

Q. Didn't you call him a company union fink at that meeting?

A. No.

Q. You are sure you didn't, or is it just your recollection that you didn't?

A. I have never called him a company union fink to the best of my recollection.

Q. You gave a report at this meeting, didn't you?

A. Right.

Q. And you dealt with the union problem of secession in Utah, didn't you?

A. That is true.

Q. And Jencks gave a report at this meeting on the union problem of secession in the Southwest, didn't he?

A. That is true.

Q. Incidentally, on this question of elimination of discrimination we were discussing a little while ago, one of the most difficult employers that the unions faced on this issue was Kennecott Copper, wasn't it?

A. On the whole question of discrimination against the Mexican-American people, or against any other minority, I came to the conclusion that you can't be against anti-discrimination and preach the doctrine of class hatred because whole classes of people—

Q. I haven't asked you about that.

Mr. McTernan:

Your Honor, will you ask the witness to answer my questions?

The Court:

(To witness) Just confine yourself to the question.

Q. Now, what I have asked you is whether the unions didn't have more difficulty with Kennecott Cooper on this issue of discrimination against Mexican-American people than with any other employers it had?

A. Kennecott Copper in Utah was the only company that had a substantial number of Mexican-American people. Now, in the Southwest there were probably a lot

of Mexican-American people. I wasn't familiar with the Southwest territory. I never worked down there, never organized there.

Q. Well, didn't the union regard Kennecott Copper in the Southwest as its most difficult employer on the subject of discrimination against Mexican-American people?

A. I don't know whether they did or not, or whether they regarded some other company as being more difficult. They regard all companies as being difficult.

Q. Well, you did at the time yourself?

A. That is true, I did.

Q. You have changed your mind about that?

A. That is right, I have changed my mind. That is why I am here.

Q. And that is why you are with Kennecott Copper also?

A. No, sir, not necessarily, that isn't why I am with Kennecott Copper.

Q. Anything to earn a living, Mr. Petersen?

A. No, not anything to earn a living, Mr. Defense Attorney.

Q. Now, you didn't attend any more meetings with Jencks after the one in May or June of 1948, did you?

A. I have attended quite a few meetings.

Q. I didn't ask you that. I asked you whether you attended any more meetings with Jencks after May or June of 1948?

A. I don't recall whether I have or not.

(At this point a fifteen-minute recess was taken until 3:25 P. M. the same day, at which time proceedings were resumed as follows):

On Cross-Examination Resumed.

Questions by Mr. McTernan:

Q. Now, back in the time when you were connected with Mine-Mill they had certain industries which had agreements with certain producers, did they not?

A. That is true.

Q. Anaconda?

A. Yes.

Q. And Kennecott?

A. That is right.

Q. And American Smelting and Refining?

A. That is right.

Q. And Phelps-Dodge?

A. That is right.

Q. And they held nationwide bargaining with reference to the contracts with those companies, did they not?

A. They bargained with one place but not for all of the properties of the company at the same time. The settlements were made separately, but they did have these company-wide bargaining councils.

Q. And at those company-wide bargaining councils they worked out the main issues on wages, did they not?

A. That is right.

Q. Now, the expiration dates of the collective bargaining contracts with these companies fell on approximately the same time of the year, isn't that right?

A. They varied. If I remember correctly, Anaconda expired March 31st.

Q. Isn't it true that at that time Anaconda, Kennecott, and American Smelting and Refining ended in June?

A. Anaconda didn't end in June, to the best of my recollection. Kennecott expired the last of June. Anaconda, expired, I believe, on the 31st of March.

Q. What about American Smelting and Refining?

A. I believe A. S. & R. was also the 30th of June.

Q. Do you remember about Phelps-Dodge?

A. No, because that was down in the Southwest. I don't know what date that expired.

Q. Well, isn't it true that the union attempted each year or two years, whenever these contracts expired, to work out its policy and position concerning a new contract before the expiration dates?

A. Of the old contract?

Q. Yes?

A. That is true.

Q. Weren't there some years when the contract as a whole did not expire but there was an opening for wages?

A. A re-opening, yes.

Q. And a re-opening occurred on the anniversary date of the contract, did it not?

A. That is correct. That is my understanding.

Q. So the union would hold conferences to work out its wages and other items of collective bargaining before either the re-opening date or the termination date of these contracts, isn't that right?

A. That is correct.

Q. And these conferences were called Wage Conferences, were they not?

A. That is right.

Q. And isn't it true that normally the Wage Conferences were held some time before March 31st of each year so as to work out the position in time to meet the negotiations at Anaconda?

A. Usually that was true. May I explain that answer?

Q. You mean that there were some variations from that pattern?

A. Whenever the union got in a jam, or whenever they felt that there was a crisis approaching, they called a Wage Conference, or called a conference so that people from all over the International Union could come in and discuss it. All the conferences weren't held in the early part of the year.

Q. I am not talking about conferences. I am talking about Wage Conferences. Isn't it true that there was an annual Wage Conference held in that portion of the year prior to March 31st?

A. I am not sure it was prior to March 31st.

Q. Well, the Wage Conferences, as I understand you to say, were held in preparation for collective bargaining with these big products?

A. That is right, that was the idea.

Q. And bargaining with Anaconda had to start prior to March?

A. That is true.

Q. Does that assist your recollection in connection with my question as to whether the Wage Conferences were held in the portion of the year prior to March 31st?

A. It assists my recollection in this respect, that at the Wage Conference in Salt Lake City in 1947, that the International Executive Board, the members of it that were present, were very angry at Bill Mason and at Anaconda.

Q. I am not asking you for a lot of union ins and outs. I am trying to get a pattern established here: Were the Wage Conferences held annually prior to March 31st?

A. I don't know if they were held prior to March 31st or not. The pattern was to hold them before the contract expiration dates.

Q. Or the contract re-opening dates?

A. Right; but there were variations from that pattern.

Q. Now, it also happened, didn't it, that sometimes when the negotiations were particularly difficult, and the position of the union and employers were widely separated, that additional Wage Conferences would go on during the negotiations?

A. That is true.

Q. But isn't it true that the term "Wage Conference" in the union was applied only to those conferences which were called to discuss the union's position in collective bargaining in reference to these four companies that we have just been talking about?

A. I am not sure that is correct.

Q. Now, there was a conference in May or June, in Denver, in 1948, is that right?

A. To the best of my knowledge that is when it took place.

Q. And isn't it true that that conference was not a Wage Conference?

A. That conference was called to prevent secession first, as I understand it.

Q. What I am getting at, was it or was it not a Wage Conference?

A. I don't know if it was called a Wage Conference or not.

Q. And if you called it a Wage Conference in your direct examination you were in error?

A. I might be in error. I know it was called by the International Executive Board.

Q. At the insistence of Kenneth Eckert, isn't that right?

A. I don't know if that is true either.

Q. Do you recall that prior to that conference Kenneth Eckert was demanding that the union comply with

the non-Communist affidavit requirements of the Taft-Hartley Act and was insisting upon a conference to work out a union position on it?

A. To the best of my recollection Kenneth Eckert was in favor of complying with the Labor & Management Relations Act, but I don't remember him insisting upon a conference.

Q. Weren't you aware in 1948 that the International Executive Board called this conference and announced that it was calling it as a result of the situation created by Eckert's demand concerning compliance?

A. I am not so sure of that either, because Eckert wasn't the only one involved. I don't know whether Eckert made the demand or whether the International Executive Board wanted the conference.

Q. Do you recall that the International Executive Board called the conference because of the situation in the Die Casting Division created by Eckert?

A. No, I am not aware of that either.

Q. You are not?

A. No.

Q. You say that is not true?

A. I don't say it is not true. I just say I am not aware that that is true.

Mr. McTernan:

Your Honor, we have gone as far as we can and we would like to request a little more time to prepare further cross-examination of this witness.

The Court:

The Court will give you reasonable time to prepare.

Mr. McTernan:

Thank you. We would like some time to get documents that we feel are necessary to further cross-examine the witness.

The Court:

Can you do it by two o'clock tomorrow?

Mr. McTernan:

No, Your Honor, we can't. We have to go out of town for these documents, to Denver and other places. They have to come in by mail. We can't even guarantee that they will be in the city by tomorrow. You see, Your Honor, we go back here a number of years. It is a question of going into old files.

The Court:

The Court is going to give you a reasonable time to complete your cross-examination.

Mr. McTernan:

Thank you. I think we can complete it by Monday.

The Court:

All right. Let the record show, Mr. Reporter, that at the request of the defendant the Court has given him what he considers reasonable time to prepare for a further and final cross-examination of this witness. (To witness): You are excused until 9:30 o'clock Monday morning.

(Witness excused.)

The Court:

Now then, while we are on that subject, we will complete the examination of any other witnesses if you have further cross-examination.

Mr. McTernan:

Your Honor, we have our problem again as to the question of time. We have received a telephone communication from Silver City, during the lunch hour, advising us that there were documents there that we could use in our cross-examination. They are being brought in now. The person who is bringing them hasn't arrived yet. We were on long distance telephone for a considerable time last night with reference to the witness Ford and we don't have that information. It hasn't arrived yet.

The Court:

When do you think you will be ready to complete the examination of the witness Ford? Well, let the Court ask first, do you want to further cross-examine the witness Brooks?

Mr. McTernan:

Yes, Your Honor. I think we can be ready to finish the cross-examination of the witness Brooks tomorrow; but I think with reference to the witness Ford, we have to go to Phoenix and Los Angeles, and we simply can't be ready before Monday.

The Court:

All right. The Court will excuse the witness Brooks until 9:30 tomorrow morning, and he will excuse the witness Ford until Monday morning at 9:30 o'clock. Let the record show, Mr. Reporter, that the Court regards

that as reasonable time in all fairness to the defendant to complete their cross-examination of what they term "surprise" witnesses.

Mr. Williams:

Your Honor, they have just served Ford with a subpoena to produce his income tax returns. I think you virtually ruled on that from the bench yesterday. We would like to move the Court to suppress that subpoena on the ground it is unreasonable and oppressive, and that it is a fishing expedition, and that it invades his private affairs, and is irrelevant and immaterial to this case. Under the stipulation and agreement we made we have given them the figures they asked for, and now they have asked for the income tax returns only as they relate to those same figures. We ask that the subpoena be suppressed so that Ford will know what to do, if he's got to get them or not. He testified here he did not have them with him. I never heard of anybody being forced to produce an income tax return anywhere except in a prosecution where the official records of the Internal Revenue Department are used.

Mr. McTernan:

Well, Your Honor, with all due respect to Mr. Williams, I have heard of them being used a great many times. I have not caused the subpoena to be issued on the Department of Internal Revenue. There is a privilege attending a record which is in the possession and control of the Government. There is no such privilege attending such records or copies of records which are kept in the personal files of the taxpayers, and reccurse has been had many many times over the years to income tax returns where they contain data which is of evidentiary value in connection with the cross-examination or im-

peachment of a witness. We want those income tax returns, Your Honor, because we want to find out whether the income which this witness has received from the United States Government for services rendered was reported on his income tax return.

The Court:

He is not being tried for that now, and, as the Court understands it, the District Attorney, speaking for the Federal Bureau of Investigation, has given you an itemized statement of all the money paid by the F. B. I. to the witness Ford.

Mr. McTernan:

Well, they have given us some figures, Your Honor, but we wanted the record also to determine whether or not he has defrauded the United States Government and mis-represented his income, because this is a very important matter of impeachment. I also want the record in order to show the question of interest and bias attending this witness in his attitude towards this case by virtue of his having received such money supplemental to his income where his finances were in the state that he described on his cross-examination. Now, I submit that for all of those purposes the documents are relevant and material. We are entitled to see him. We don't want to impose on Mr. Ford any unreasonable conditions. If he can't produce them conveniently on Monday we will be perfectly happy to work out some other arrangements. Your Honor, Mr. Witt just handed me a note reminding me that the subpoena calls for copies of the State returns as well as copies of his Federal returns, and we want both for all of the reasons stated.

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Mr. Williams:

Your Honor, I submit it is not proper grounds of impeachment to impeach a witness on a private matter of his life, entirely disconnected with this case, whether he made any return or not—

Mr. McTernan:

Your Honor—

Mr. Williams:

May I finish?

Mr. McTernan:

I am sorry.

Mr. Williams:

You insist on your finishing.

Mr. McTernan:

I am sorry. I thought you had finished. I wouldn't interrupt you for the world.

Mr. Williams:

I know it. Impeachment matters must go to conviction of criminal offenses, or they must go to proof of criminal offenses involving moral turpitude, and in all of the cases I know anything about it says you cannot impeach a man on collateral matters because that would be trying another issue altogether. If you bring that return here you could try that case a week to see if he had made a proper return. I submit it is a collateral matter and request the Court to overrule his motion for a subpoena at this time.

Mr. McTernan:

Your Honor, we want to impeach this witness on an offense involving moral turpitude. You have a case before you where the triers of the facts are asked to take the word of one witness against the word of the defendant. We want to show a crime involving moral turpitude in defrauding the Government of the tax by failing to report income. This is clearly as proper impeachment as anything could be, Your Honor.

The Court:

The Court is ready to rule. The Court is not going to require this witness to produce his personal, private, and confidential income tax returns, and so holds, and for that reason grants the motion of the Government to suppress this subpoena.

Mr. Williams:

Your Honor, as to the next order of procedure here, we are a little confused. You had told them to be ready in the cross-examination of these two witnesses at two o'clock.

The Court:

Well, they say they are not ready, and the Court has tried to be fair to everybody and reasonable too. Since these witnesses were surprise witnesses to them the Court is going to give them full opportunity to cross-examine these witnesses.

JESUS TERRAZAS, a witness for the prosecution, having been duly sworn, in answer to questions propounded, testified as follows:

On Direct Examination.

Questions by Mr. Williams:

Q. What is your name?

A. Jesus Terrazas.

The Court:

You will have to speak louder than that.

Q. Where do you live?

A. I live in Bayard.

Q. How long have you lived in Bayard?

A. Lived there since 1946.

The Court:

You will have to speak louder than that. Since 1914?

The Witness:

'46.

Q. And what is your business now?

A. I work for Kennecot Copper Corporation, Operating Department.

Q. Are you a union member now?

A. I am not now. I used to be since 1946 to 1953.

Q. What union were you in from '46 to '53?

A. International Union, Mine, Mill and Smelter Workers.

Q. Where?

A. Bayard, Local 890.

The Court:
A little louder.
Q. What position did you hold there?
A. I was Shop Steward.

The Court:
You were what?

The Witness:
I was Shop Steward.

Q. Do you know the defendant, Clinton Jencks?
A. Yes.
Q. How long have you known him?
A. I know Jencks since he started the office in Bayard as the President to this time, this date.

The Court:
Surely you can speak louder than that: There is no cause for nervousness or excitement. Speak out loud.

Mr. McTernan:
Could I have the last answer that the witnes gave?

(The reporter read same.)

Q. Do you know when he started there?
A. When he started as the President?
Q. Yes. Do you know about the date you met him, in other words?
A. I didn't get you.
Q. About when did you first meet Clinton Jencks, what year?
A. I met Jencks in 1946 or 1947.

Q. Do you know what position Clinton Jencks held when you first met him in '46 or '47?

A. Sir?

Q. What was his job when you first met him?

A. He was the President.

Q. President of what?

A. Of the Local 890.

Q. Did you ever attend any union meetings with Clinton Jencks there?

A. Yes, I attend union meetings from 1946 to 1953.

Q. Did you ever join the society known as "Anma"?

A. Yes.

Q. That is the National Association of Mexican-Americans, is it not?

A. Yes.

Q. You say you joined it?

A. Yes, sir, I joined it in 1949.

Q. Did you attend any meetings of that organization when Clinton Jencks was present?

A. I attend meetings where Jencks was present.

Mr. McTernan:

Excuse me. We object, Your Honor, to any testimony as to this organization, Anma, on the ground it is beyond any issue in this case, and not relevant.

The Court:

What is the materiality, whether he saw the defendant Jencks at the Anma meeting?

Mr. Williams:

We will have testimony, Your Honor, connecting that meeting and their policy with the Communist Party and their doctrines and teachings.

The Court:
It is a question of what Jencks said and did.

Mr. Williams:
Well, if I can't find out whether he was there and met with him—

The Court:
I thought he said he was.

Mr. McTernan:
I am objecting to any testimony dealing with Anma. It has nothing to do with any issue in this case.

The Court:
Objection sustained.

Q. Did you ever hear Clinton Jencks make any speeches concerning the Korean War and its connection with the United States?

Mr. McTernan:
Objection.

A. Yes.

Mr. McTernan:
Just a moment, may that be stricken, Your Honor?

The Court:
Yes, the Court don't see the materiality of that.

Mr. McTernan:
May we approach the bench?

The Court:

Yes.

(Counsel for both sides approached the bench and conferred with the Court, in a low tone of voice, as follows:)

Mr. McTernan:

Your Honor, this is the second reference to the Korean War, and this reference has less excuse in the record than even the first one. In fact, it has no excuse whatsoever. This is a matter in which feelings run high, and I submit that if counsel is permitted to go into subjects like this, where they are apparently up in the air, so to speak, unrelated to Communist Party activities, Communist Party meetings, and, as a matter of fact, even if they were it would have no bearing because the issue here is membership and affiliation, nothing else; if these things are gone into they are going to unretrievably inject prejudice into this case and there is nothing that can save us.

Mr. Williams:

We will have an expert witness and this man is going to say that what Jencks said there was the teachings and instructions from the Communist Party. Doesn't that show affiliation?

The Court:

Well, there is no mention of the Communist Party. You have asked this witness if Jencks made a speech there about the Korean War.

Mr. Williams:

We will have an expert witness to hook this up with the Communist Party's doctrine and teachings.

Mr. McTernan:

They are trying to establish that somebody said something which sounded like something which the Communist Party said. I submit that is not the proper way to prove membership.

Mr. Williams:

It would show affiliation by something he said and did concerning the Communist Party and his work.

The Court:

If you want to prove anything by this witness that Jencks said or did, all right, I mean, that shows his connection with the Communist Party, but not what he said, a speech he made about the Korean War. Lots of people were making them. Objection sustained.

Mr. Herring:

Let us adjourn until tomorrow morning. We have no other witnesses available.

Mr. Williams:

Let us produce citations.

The Court:

That is my ruling.

Mr. Alderman:

A lot of people make statements about the Korean War and if you consider them in the vacuum they might not be evidence of anything, but these statements could

be considered in the light of the testimony already produced here, and you have to look at the whole thing.

The Court:

Simply because a man has fixed opinions about the Korean War, for or against, should not be held against him.

Mr. Williams:

How about when he goes a little further and denounces the Korean War as an act of agression brought on by the imperialistic people of Wall Street, and so forth, and tells everybody they ought not to go to war and not allow their sons to go to war, and to do everything they could to block it, and so forth, and even go to jail rather than do it?

Mr. Alderman:

Could we produce some authorities on that in the morning?

The Court:

Well, that is the Court's ruling. You can present them later if you want to.

Mr. Williams:

All the witnesses that we have available are right along this line, what he advocated and preached for at Bayard after he signed this affidavit.

The Court:

You got to prove that that is part of the principles of the Communist Party.

Mr. Williams:

We have an expert witness sitting in the office ready to testify.

The Court:

Objection sustained at this time.

Mr. Herring:

We have no witnesses available that we can put on in view of the deferment of the cross-examination of these other witnesses. We would like to have until tomorrow to get other evidence.

Mr. Williams:

All this witness will testify to is what our expert will say about his teachings of the Communist Party, and that he advocated and preached it out there after he signed this affidavit. We think it shows he was affiliated.

The Court:

You can prove by this witness anything he said about the Communist Party, whether he was a member of it or he believed in the principles of the Communist Party. The Court will admit that, but the Court is not going to permit anything about the Korean War. Almost every person in the country at that time had some opinion about the Korean War, including the lawyers and the Court.

Mr. Williams:

They didn't have any that people should go to jail rather than go to the Army, and a bunch of capitalists running it.

The Court:
Objection sustained at this time.

(Resuming before the jury):

Q. Did you ever hear Clinton Jencks say anything about the position the United States Government was taking in the Korean War?

Mr. McTernan:
Same objection.

The Court:
Objection sustained.

Mr. McTernan:
May we approach the bench? I have a motion to address to the Court.

The Court:
Yes.

(Counsel for both sides again approached the bench and conferred with the Court, in a low tone of voice, as follows:)

Mr. McTernan:
That last question deals with precisely the same situation that Your Honor described as prejudicial. It was done in flagrant disregard of your ruling. I move for a mistrial.

The Court:
Motion overruled.

(Resuming before the jury):

Q. Did you ever hear Clinton Jencks say anything about the Taft-Hartley Act and the signing of non-Communist affidavits?

Mr. McTernan:
I object to this, Your Honor, on the same ground.

The Court:
That objection is overruled on the making of a non-Communist affidavit under the Taft-Hartley Law.

I will ask the question, then, did you ever hear Clinton Jencks say anything about whether or not he had signed a non-Communist affidavit in compliance with the Taft-Hartley Act?

A. Yes.
Q. Do you understand me?
A. Yes.
Q. All right, answer it?
A. Jencks said in the Shop Steward meeting that he had signed the non-Communist affidavit.
Q. You know about when that was?
A. Sometimes 1950.
Q. Had you ever heard him discuss the signing of the affidavit before that, as to whether or not they should or should not do it?

Mr. McTernan:
Objection on the same ground.

The Court:
Objection overruled.

Q. Had you ever heard him, before he said he signed it, had you ever heard him say anything about whether or not they should sign them?

Mr. McTernan:
Same objection.

The Court:
Objection overruled.

A. No, he said in several meetings.

Mr. McTernan:
May we have this fixed as to time and place, Your Honor?

The Court:
All right. When and where was this?

The Witness:
Bayard, Local 890.

The Court:
At Bayard, Local 890.

The Court:
At Bayard, New Mexico?

The Witness:
Yes, sir.

The Court:
Union Local 890?

The Witness:
Local 890.

The Court:
And when was it, about when?

The Witness:
Sometimes 1950.

The Court:
What time in 1950?

The Witness:
I don't know exactly when.

The Court:
All right, now, what did the defendant Jencks say about it?

The Witness:
Before that Jencks said many times to the membership that he didn't want for the membership to make the leaders sign the non-Communist affidavit because it was a law to break unions.

Mr. Williams:
(To Court) Did you understand it?

The Court:
As the Court understands your testimony, he told the union members not to sign it because it was a law to break union membership?

Mr. McTernan:
And that this was said several times in 1950, as I recall his answer.

The Court.

I think so. The Court always tries to follow the testimony. But when and where did Jencks tell you he had signed the non-Communist affidavit?

The Witness:

Yes, he said 1950.

The Court:

When and where did he tell you that he had signed the affidavit?

The Witness:

I don't remember when he said he signed it.

The Court:

Where were you?

The Witness:

In Bayard Union Hall.

The Court:

The union hall of Local 890?

The Witness:

Yes, sir.

The Court:

What is the nearest you can fix the time, what is your best recollection, that he told you he had signed the non-Communist Affidavit in 1950?

The Witness:

Sometimes after July. I just don't know exactly when.

The Court:
July, 1950?

The Witness:
Yes, sir.

The Court:
All right, any further questions?

Mr. Williams:
That is all we have except along the line you ruled out, Your Honor, from this witness.

The Court:
All right, the witness is yours, Mr. McTernan.

On Cross-Examination.

Questions by Mr. McTernan:

Q. Mr. Terrazas, did you say that Mr. Jencks spoke in a union meeting in 1950 urging that the membership not ask the union officers to sign a non-Communist affidavit?

A. I said in 1950 Jencks told the membership not to encourage the leaders, the union leaders, to sign the non-Communist affidavit.

The Court:
Not to what, "encourage"?

The Witness:
"Encourage".

The Court:
Not to encourage the leaders to sign?

The Witness:
Yes, sir.

Q. And that was in 1950?
A. 1950.
Q. When in 1950?
A. I don't know.
Q. You mean you can't remember what month it was?
A. No, sir.
Q. Did he say that more than once in 1950?
A. 1950.
Q. The question is, did he say that more than once in 1950?
A. I don't know what month.
Q. The question is, did he say that one time or more than one time?
A. He said several times, several union meetings.
Q. And you are sure that was in 1950?
A. That was 1950.
Q. And there is no doubt in your mind that it was the year 1950?
A. I am positive sure that was the time.
Q. Were you a member of the union in 1949?
A. Yes.
Q. Don't you know that all the union's officers signed the non-Communist affidavit in 1949?
A. No, I don't know.
Q. You didn't know that?
A. I don't know. He said he had signed it but he didn't say when.
Q. Well, the time that he said that he had signed it was in July of 1950, isn't that right?
A. After July some time he said he had signed it.

Q. Now, before that, before July, 1950, but still in the year 1950, he asked the union membership not to require the union officers to sign the non-Communist affidavit, is that right?

A. Yes, because it was a law to break unions.

Q. Don't you know that Mr. Jencks signed a non-Communist affidavit in the year 1949?

A. No, I don't know. He said he had signed it but he didn't say when.

Mr. McTernan:

No further questions.

Mr. Williams:

That is all.

(Witness excused.)

Mr. Williams:

Your Honor, if they have no objection, and if you don't, we would like for you to allow us to adjourn at this time. We have two or three witnesses right along this same line and we expected that they would more than take up today. We would like to wait until tomorrow morning to resume our testimony with other witnesses.

The Court:

Well, the Court thinks we ought to be able to proceed a while. It has already proved a rather long case, and we don't want to waste any time unless it is absolutely necessary.

Mr. Williams:

We depended on their cross-examination of the witnesses Ford and Brooks, and we had two or three wit-

nesses of this nature to put on. That would have taken until at least noon tomorrow. We don't have anyone immediately available.

Mr. McTernan:

We recognize that the Court's rulings oftentimes disrupt counsel's plans. I think it is reasonable that they have the rest of the afternoon.

The Court:

The Court is not thinking about himself or counsel. He is thinking about the jury. Well, the Court thinks an unusual situation has developed here because it was anticipated that Brooks and Ford would be cross-examined this afternoon, but in view of the defendant's objections and the desire of the Court to be obsolutely fair it has passed over one of them until tomorrow and one of them until Monday. You will be able to proceed with dispatch in the morning at 9:30?

Mr. Williams:

Yes, sir, we have some other witnesses.

The Court:

Well, under the circumstances, gentlemen, the Court will make an exception. He is not going to do it anymore unless there is some emergency.

(At this point a recess was taken, at 4:15 o'clock P. M., and upon reconvening at 9:30 o'clock A. M., January 15, 1954, proceedings were resumed as follows):

CLAY MARTIN BROOKS, a witness for the Government, was recalled for further cross-examination, and testified further as follows:

On Cross-Examination: (Cont'd)

Questions by Mr. McTernan:

Q. Mr. Brooks, in this conversation you say you had with Mr. Jencks, the little boy displayed a Mother's Day Card?

A. It was a decorative card, possiby could have been a birthday card or a Mother's Day card.

Q. Don't you recall saying on direct it was a Mother's Day card?

A. I said. Mother's Day, or it could possibly have been a birthday card.

Q. Wasn't it a Mother's Day card?

A. It was a decorative card that the boy brought. I didn't read it.

Q. Do you recall saying that you were sitting there with Mr. Jencks and Mr. Gladstone, discussing jobs and things, when Mr. Jencks' little boy, three or four years old, brought out a Mother's Day card and showed it to you?

A. Possibly I said a Mother's Day card. It was a decorative card.

Q. What I want to get at is this, did you say that on direct examination?

A. As best as I remember I did.

Q. And it was a Mother's Day card, wasn't it?

A. It could have possibly been a birthday card.

Q. What is your best recollection?

A. I gave that testimony as my best recollection.

Q. Your best recollection is that it was a Mother's Day card?

A. Yes.

Q. And you saw it?

A. I saw the card, yes.

Q. You know when Mother's Day fell that year?

A. No, I don't know exactly what day it was, no.

Q. Well, Mother's Day falls on the second Sunday of May each year, doesn't it?

A. Comes in May, yes.

Q. Don't you recall that it comes on the second Sunday in May?

A. I believe you are right.

Q. And this conversation that you had with Mr. Jencks was on Mother's Day in May, 1947, is that right?

A. I didn't say that. I told the Court that I did not know the exact date of the conversation. I made no statement to that effect. It was in 1947, definitely, in the year 1947, and we were neighbors in the Hanover Project.

Q. Now, Mr. Brooks, you don't remember saying that it happened in May, 1947?

A. I said the best I remembered it was that. I didn't say in May, no, sir.

Q. You remember testifying on direct examination that you had a conversation on your porch with Mr. Irving Gladstone, who used to be the geologist of the United States Mining Company, and that the date was May, 1947?

A. No, sir, I did not say May.

Q. You don't remember me cross-examining you about it right after your direct examination in which you said your best recollection was that it was May?

A. I didn't say May definitely. The only definite date I knew about was in 1947 when we were neighbors, and this other was incidental and things that are trying to bring out to place the date. I am not sure, I stated that fact before.

Q. I have asked you about the exact date. I have asked you about a date within a whole month. Do you recall testifying on direct examination that the conversation took place sometime in the month of May?

Mr. Williams:
Your Honor, I submit that he has answered that seven times, that he did not say that, and I don't see how counsel should be allowed to put words in his mouth.

The Court:
Objection overruled.

Mr. McTernan:
May the question be read?

(The reporter repeated the question.)

Q. Do you recall that?
A. I recall saying that to the best of my recollection it was but I didn't give a definite date, no, sir.
Q. Is it now your best recollection that the conversation occurred in the month of May?

The Court:
Just is it your best recollection, let's get through with this.

The Witness:
I don't remember the date.

The Court:
He is not asking for the exact date. Is it your recollection it was in the month of May?

The Witness:

I knew we were playing softball in the afternoon, and we had started playing in the Spring of '47, that is the only year that we played softball.

The Court:

The question is now, is it your best recollection, best recollection, that it was in the month of May, '47? Now, you can answer that whatever way you think the facts are.

The Witness:

I stated that as I remember it was. I didn't say it was a definite date.

Q. Is that what you say, you now say that your best recollection that it happened in the month of May?

The Court:

That is what he just said.

Q. What time of day, do you remember?

A. It was in the afternoon, after we had our ball practice.

Q. Were you working six days a week at that time?

A. Yes, sir, I was.

Q. You weren't working on the date this conversation was held, is that right?

A. Well, I got home fairly early in the afternoon from work.

Q. Do you know it was a work day or do you know it was Sunday?

A. It was during the week days.

Q. Now, your recollection is, you are sure that this conversation took place in the Hanover Project, are you?

A. Yes.

Q. On your porch?

A. On the platform porch, not mine, on the platform of the housing project, on and near it. We weren't all on the porch. We had come by with a couple of gloves, a ball, and a couple of baseball bats, and gathered around the platform porch.

Q. And if this conversation didn't take place in the month of May over what range of time would you put it?

A. Definitely, the only date that I stated definitely was in 1947 while we were neighbors there in the Hanover Project.

Q. You are going to put it sometime in the whole year of 1947 now, is that right?

A. I said in 1947, during the time of the baseball season. I gave the other statements as incidental.

Q. As a matter of fact, it happened on the first day of the baseball season, didn't it?

A. No, I didn't say that.

Q. You remember saying that on your cross-examination the other day?

A. No.

Q. You don't?

A. I don't remember saying that.

Q. You don't remember saying you fixed the date as May, 1947 becase you had just started to play baseball?

A. I didn't say the first day.

Q. Well, do you remember saying it was the beginning of the baseball season?

A. Yes.

Q. It had just gotten warm enough?

A. I don't remember saying anything about being warm.

Q. Do you really remember what you said on your direct examination the other day?

A. I think so.

Q. You remember what you said on your cross-examination the other day?

A. I believe so.

Q. I will ask you again, do you remember saying that the conversation happened—withdraw that. Do you remember saying that you fixed it in the month of May because the conversation took place right at the beginning of the baseball season when it had just gotten warm enough to play softball? Now, can you answer that "yes" or "no"?

A. No, I can't answer that "yes" or "no".

Q. You don't remember that, is that right? You don't remember saying that the other day?

A. I don't know if that were the exact wording.

Q. Do you remember saying it in subsance?

A. I remember saying that—

Q. I just want a "yes" or "no" answer. Do you remember saying that in substance, Mr. Brooks?

The Court:

Not the exact words. In substance, did you say that the other day?

The Witness:

Your Honor, I said—

The Court:

Well, you can answer first whether you said in substance what counsel has just asked you, whether or not it was the beginning of the softball season.

A. I don't remember stating the beginning, no.

Q. Where have you been since you left the stand the other day?

A. I haven't left El Paso.
Q. Where were you yesterday?
A. In the Courtroom, in the witness room, all day.
Q. In the witness room?
A. Yes, sir.
Q. You don't mean in the Courtroom, do you?
A. In the witness room.
Q. Have you discussed your testimony with anybody since you have been off the stand?
A. No, sir, I haven't furnished any information or had contact with anyone.

Mr. McTernan:
We have no further questions.

Mr. Williams:
That is all.

(Witness excused.)

HARVEY M. MATUSOW, a witness for the Government, having been duly sworn, in answer to questions propounded, testified as follows:

On Direct Examination.

Questions by Mr. Williams:
Q. What is your name?
A. Harvey Marshall Matusow.
Q. And where do you live now, Mr. Matusow?
A. New York City.
Q. How long has New York been your home?
A. At present for about four months. I was born there.

Q. Has New York been your home most of your life?

A. It has.

Q. And what is your business now?

A. I am an actor and a writer.

Q. And were you ever a member of the Communist Party?

A. Yes.

Q. When did you join that Party, Mr. Matusow?

A. In the fall of 1947.

Q. Where?

A. In New York City.

Q. And what division of the Party did you belong to?

A. I was in the Youth Organization.

Q. Approximately how old were you when you joined the Party?

A. About twenty-one.

Q. Did you belong to any other organizations in connection with the Communist Party?

A. I did.

Q. Name them, or some of them, please?

A. The "American Youths for Democracy"; "Labor Youth League"; "The Young Progressives of America"; "The Progressive Party"; The association of Mexican-Americans, known as "Anma"; the "Labor Youth League"; "Civil Rights Congress"; and others.

Q. Approximately how many such organizations do you believe you belonged to?

A. On and off I belonged to better than thirty, over and above the ones I mentioned, or affiliated with, that is.

Q. Did you ever visit or move to the state of New Mexico?

A. I did.

Q. At what time, if you know?

A. July of 1950.

Q. And where did you come from?

A. From New York City.

Q. And to where?

A. Taos, New Mexico.

Q. Where did you first come to from New York City; did you visit anywhere, or pardon me, did you visit any place in New Mexico before you moved to Taos?

A. I did.

Q. Where?

A. The San Cristobal Valley Ranch.

Q. Who ran that ranch at the time, if you know?

A. Craig Vincent; Craig and Jennie Vincent.

Q. Had you previously met and known them?

A. I had.

Q. Where?

A. In New York City.

Q. At what place?

A. At Communist affair in the Hotel Albert in New York City.

Q. How come you to come to their place?

A. When I met them in New York they told me if I was ever in the vicinity of New Mexico I could stop by and visit the ranch.

Q. Can you tell us the names of any of the others, I guess you'd call them the staff members, there at the ranch, the people who worked for the Vincents?

A. I can.

Q. Who, please?

A. Earl Robinson.

Q. Who is he?

A. He was on the social staff of the ranch, a singer.

Q. Had you known him prior to getting there to the ranch?

A. I had.

Q. Do you know of your own knowledge whether or not he was a member of the Communist Party?

A. I do.

Q. Who else was there at the ranch as a staff member when you got there?

A. Mr. Irving Bazor. He is the only other staff member who I remember being there while I was there.

Q. Did you know him when you arrived there at the ranch?

A. No, I hadn't known him before.

Q. I believe you said you knew of your own knowledge whether or not Earl Robinson was a member of the Communist Party; now, was he or was he not?

A. He was.

Q. You know of your own knowledge whether or not Bazor was?

A. I did.

Q. Was he?

A. He was.

Q. Do you know Clinton Jencks, the defendant in this case?

A. I do.

Q. When and where did you meet him?

A. At the San Cristobal Valley Ranch in July of 1950.

Q. Can you name any other guests there at the ranch, or people there at the ranch on that occasion whom you knew to be Communist Party members?

A. I can.

Q. Name some of them.

A. Ernie Lieberman. Mr. Abraham Marcus, of New York. Elmer and Pearl Bernstein, of New York. Ruth Stone. Alex and Lee Endy. Ronnie Gilbert. Mr. Howard deSilver. That is all I can think of now.

Q. Do you know Joseph DeSanti?

A. Yes, I do.

Q. Was he at the ranch when you got there?

A. Not when I got there.

Q. Did you see him at the ranch during that period of time?

A. Yes, I did see him at the ranch.

Q. Do you know whether or not he was a member of the Communist Party?

A. I do.

Q. Was he?

A. He was.

Q. Do you know whether or not he held any position with the Communist Party; and if so, what was it?

A. He was New Mexico State Organizer of the Communist Party.

Q. Did you have any conversations there on that occasion with Clinton Jencks, the defendant in this case, concerning the Communist Party or its activities?

A. I did.

Q. Do you know about when the first conversation occurred?

A. Yes.

Q. When was it?

A. Shortly after I arrived.

Q. Well, about what day in July, if you know, was it; what is the most accurate day in July that you went there?

A. Well, it was in the latter part of July, between the 15th and 20th, to the best of my recollection.

Q. Of 1950?

A. That is correct.

Q. Was anyone else present at this first conversation you have in mind that you had with Jencks concerning Communist Party activities?

A. Yes.

Q. Who?

A. Mr. Abraham Marcus.

Q. I believe you have testified him as a Communist Party member, did you not?

A. That is correct.

Q. From that conversation with Mr. Jencks or otherwise—I will withdraw that question. Please give us, the best you can, what was said by you, Mr. Marcus, or Mr. Jencks in this first conversation, and giving the set-up for it, what you were doing, and so forth?

A. I was unloading some cartons of Communist books from my truck, the truck which I travelled to the ranch in. Mr. Jencks and Mr. Marcus were helping me get the books out. Mr. Marcus said that he had written a book called "Elements of Radio" which was used as a text book in the north city school systems, and I said that I had a copy of this book, being one of the few non-Communist books I had in my library, to be sure; I started to unpack the cartons, a few of them, to try and find this book. While I was unpacking the cartons we started to discuss the Communist Party. I said that I had left New York permanently and was thinking of either living in New Mexico or California; that I was going to transfer my Communist Party membership to either New Mexico or California. When I said that Mr. Jencks said, "It is a good idea, we can use more active Communists out here."

Q. Do you recall having another conversation with him along about that time or soon thereafter?

A. I do.

Q. About what was the date of this second conversation that you recall, if you know, approximately?

A. Well, there were many conversations.

Q. I mean, concerning the Communist Party activities?

A. That took place, I believe the last Sunday in July or the first Sunday in Agust, 1950.

Q. About how long did you visit there at the ranch on this occasion?

A. I was a guest at the ranch for about nine or ten days.

Q. Was Mr. Clinton Jencks there all of that time as a guest?

A. He was.

Q. Was his wife, Virginia, there also?

A. She was.

Q. And the second conversation about Communism with Mr. Jencks occurred, I believe you say, about the first Sunday in August?

A. It was the first Sunday in August or the last Sunday in July.

Q. Of 1950?

A. That is correct.

Q. What, if anything—As best you can recall, relate the conversation with Mr. Jencks, what you said and he said, or anyone else who was present in the conversation?

A. I told Mr. Jencks that I had just spoken to Mr. Joseph DeSanti, and had previously spoken to Mr. Craig Vincent about trying to expedite the transfer of my Communist Party membership from New York City to the state of New Mexico, and he said it was a good idea, "we can use you out here, we need more active Party members." He then told me he was preparing a lecture which he was going to deliver at the ranch in regard to the Communist-sponsored Stockholm Peace Appeal and asked me what I and other Communists had been doing in New York in relation to the Communist-sponsored

Stockholm Peace Appeal. I told him we had been pretty active, getting signatures on petitions for this Stockholm Peace Appeal, that we had held street meetings and canvassed neighborhoods to get signatures on petitions to raise funds. That one group of us had gone up to the Polo Grounds just before a Giant-Dodger double-header and painted sidewalks and walls, were going to paint sidewalks and walls, with slogans put up by the Stockholm Peace Appeal. I told him about a "do-day", which we called it. That was a day when I told him we had no meetings. We just put into action everything we had discussed the preceding week. No discussion, no meeting, but our Communist Party club just went out and did it. He said it was a very good idea. He would like to mention the "do-day" in his lecture and bring that idea back to some of his fellow Party members in Silver City. I then asked him what he and other Communists in New Mexico were doing in relation to the Stockholm Peace Appeal and the right to put an end to the Korean War. He pointed to a lapel pin which he was wearing, told me he had gotten that lapel pin when he was in Mexico visiting some Mexican Communist union organizers with the Mexican miners union. I don't remember the exact name of the union but it was something like "Mexican Miners Union", and said that some of the Mexican Communist organizers down there had been up in Silver City and visited with him, and that they were trying to see that their contracts, both in Mexico and the United States, ran out at the same time so that they would be able to end all mining and smelting, and so forth, in basic metal production in an attempt to cut off production or slow it down for the Korean War effort, which he termed as an unjust and imperialistic war. And that, to the best of my recollection, is the second major conversation about Communism.

Q. Now, did Mr. Jencks deliver the lecture that he had spoke to you about on this occasion you just related?

A. He did.

Q. About when was that lecture given with respect to your conversation?

A. It was a few days thereafter. I believe it was the 7th or 8th of August.

Q. 1950?

A. That is correct.

Q. As best you can recall, state what Clinton Jencks said concerning the matters you have just discussed and concerning Communism in any way?

The Court:

Was this a lecture at the San Fernando Valley Ranch?

The Witness:

San Cristobal ranch.

The Court:

All right, go ahead.

A: At this lecture, which I attended, Mr. Jencks spoke about the role of the trade unions in the drive for peace and the Communist-sponsored Stockholm Peace Appeal. He spoke in favor of the Soviet Union's plan for atomic and other disarmament and putting an end to the Korean War, being that the United States was the aggressor nation, we had no business being in Korea; and during the lecture he referred to this "do-day", a day of no meetings but just action.

Q. About how many people attended that lecture?

A. Between thirty and forty, to the best of my recollection.

Q. Where at the San Cristobal valley ranch was it held?

A. In the library at the ranch.

Q. What is the nature—do you know what the nature of the books in that library are, or what the nature was?

A. At the time, yes.

Q. What nature books did you see there?

A. Many books published by the Communist Party, International Publishers, New Century Publishers. There were magazines, "Political Affairs", which is officially the Communist Party theoretical magazine. Copies of the "Daily Peoples World", the West Coast Communist Party newspaper. And certain other books not pertaining to Communism. I think they had an encyclopedia, some kind of fiction, mystery stories, and so on.

Q. Did anyone else speak at that meeting?

A. Yes, in a question and answer period.

Q. In what?

A. In a question and answer period.

Q. Questions would be asked by anyone?

A. That is correct.

Q. And anyone who cared to would respond?

A. No, the questions usually were directed at Mr. Jencks.

Q. Did anyone else answer any questions?

A. I believe so, yes.

Q. Kind of an open-house discussion, was it?

Mr. McTernan:

Your Honor, I think the leading has gone far enough.

Mr. Williams:

It is, yes.

The Court:

That is right, don't lead him.

Q. Did anyone by question or answer take any opposition to Mr. Jencks stand concerning the Soviet union or Stockholm Peace Treaty?

Mr. McTernan:

Objection to this, on the ground it calls for a conclusion.

The Court:

Objection sustained. It is a question of what was said and done there in the presence of the defendant, not the conclusion of whether it was any opposition. Just what was said and/or done there by the defendant or in his presence.

Mr. Williams:

Can't a man state, if he was present, whether opposition was expressed?

The Court:

You can ask what anybody had to say but not for this witness to conclude whether it was opposition.

Q. Do you know what anybody else said, approximately—

Mr. Williams:

Can he not say what was the nature of the questions and the answers given?

The Court:

You can ask him about his best recollection as to what the questions were, and what the answers were, and what was said by the defendant on in his presence or hearing by anybody who was there.

Mr. Williams:

(To witness) Can you answer that question the judge propounded?

The Witness:

Yes, I can. The question referred to—

The Court:

Just state what they were, in substance, the best you remember, and what the answers, if any, were, as best you remember.

The Witness:

All right, sir. The questions and answers outlined certain—

Mr. McTernan:

Just a moment.

The Court:

Don't state what they outlined, nor your conclusion about it. Just state the substance of what the questions were, if any, as best you remember, and the substance of the answers, if any, as best you remember. You can answer that now, if you can.

Mr. Williams:

I withdraw the question.

Q. Is that about all that was said and done there at the meeting that you recall?

A. That is correct.

Q. Did Mr. Jencks make any comment about the books in the library that you recall?

Mr. McTernan:

I object to this on the ground it is leading and suggestive.

The Court:

Objection overruled.

A. He did.

Q. Approximately what did he say about that?

A. He asked the people present to read the "Daily Peoples World", the Communist Party newspaper on the West Coast; and I forget the names of the pamphlets but there were a few pamphlets that were published by New Century Publishers, the Communist Press, in relation to the Stockholm Peace Appeal and the drive for peace, as he called it.

Mr. Williams:

Your Honor, this may be a repetition, but I want to ask him—(to witness) Don't answer until they rule on it.

Q. Was any opposition expressed by any member there to what Mr. Jencks advocated concerning the peace appeal and the Soviet Union's plan for atomic control?

Mr. McTernan:

I object to this on all the grounds previously urged.

Q. Please answer "yes" or "no".

Mr. McTernan:

Your Honor, this is not an attempt to evade your ruling, but to defy it.

The Court:

Objection sustained. The question, the Court repeats, is what was said and done by anybody present. If he remembers what was said or done by any particular person present he can testify to it, not some conclusion.

Q. Was any argument had there between the members in those discussions?

Mr. McTernan:

I object to this on the same grounds, Your Honor.

The Court:

Objection sustained to that.

Mr. Williams:

Can't a witness say whether people argued or whether they all agreed?

The Court:

He can state what was said and done. The jury is here to pass upon whether there was argument or opposition.

Q. Did you have any other discussion concerning the Communist Party or any of its affiliates or activities after this lecture?

A. I did.

Q. About when was this next conversation in that regard?

A. It was about the time of the lecture.

Q. If you can, state what you said and Mr. Jencks or anyone else present at the conversation said?

A. I told Mr. Jencks that I had joined the Taos, New Mexico chapter of Anma, that I was working there until my Communist Party membership was transferred from New York to New Mexico. Mr. Jencks told me that this was proper Communist Party concentration work, that he was active in Anma in the Silver City area, and stated that Anma was a key organization as far as Communist activities were concerned in the state of New Mexico, that the Communist Party in the state controlled Anma and used it as a political sounding board, a propaganda sounding board in the state, and that Anma helped in cementing fraternal and working relationships with the Communist Party and the Mexican Miners Union in Mexico.

Q. Were you still a member of the Comunist Party at the time all of these conversations took place?

A. I was.

Q. As a Communist Party member, did Mr. Jencks, in those conversations identify himself as a Communist Party member?

Mr. McTernan:

Objection to this, Your Honor; again this is a request for a conclusion.

The Court:

It is a question of whether or not he knows the defendant Jencks at that time was a member of the Communist Party.

Mr. McTernan:

That is not the question. The question actually goes to what Jencks said. I submit that that is the only thing this witness can be asked for.

The Court:

All right, we will confine it to that. You will answer whether or not Jencks said whether he was a Communist.

Mr. Williams:

I will withdraw that.

Q. Are you a member of the Communist Party now?

A. No.

Q. When did you leave the Communist Party?

A. I was expelled from the Communist Party in January of 1951.

Q. Do you know why they expelled you?

Mr. McTernan:

I object to this on the ground it is immaterial.

The Court:

Well, if he knows, objection is overruled. (To witness) You may answer.

A. I was told that I was an enemy—

Q. Just a minute, I—

The Court:

Let the record show that the question is withdrawn.

Q. Did you see any official publication stating why they expelled you?

Mr. McTernan:

I object to this on the ground it calls for a conclusion.

The Court:

Objection sustained. He has testified that he is not now a member of the Communist Party and was expelled in January of 1951, so that answers your question.

Q. Do you know of your own knowledge whether or not it is the custom of the Communist Party members to openly assert their membership, or whether it is the custom of them to keep their membership secret as far as they can?

Mr. McTernan:

I object to this because it is immaterial and irrelevant, particularly in the sense in which it is phrased.

The Court:

Well, if he knows what the custom and practice and rules of the Communist Party were at the time of the conversations he has related, the Court will permit him to answer and the objection will be overruled to that extent.

Q. Do you know that?

A. I do.

Q. What was the custom?

A. The custom was not to expose your Communist Party membership to everybody. That is, you didn't go around the streets saying "I am a member of the Communist Party." You only exposed it when you felt or when you as a Communist knew it would help you in your work with other people whom you knew to be Communists, and it would help, you might say, strengthen your work for the Communist Party.

Q. While you were attending the Anma meetings did you or any of the other Communists there expose your identity?

Mr. McTernan:
Objection, Your Honor.

The Court:
Objection sustained, unless Jencks was present.

Q. Did you have any official or professional training in the Communist Party doctrine?

Mr. McTernan:
I object to this on the ground it is immaterial and irrelevant.

The Court:
Objection overruled.

A. I did.

Q. Generally speaking, what and where did you study, what training did you have?

A. I attended the Institute of Marxism Studies, Jefferson School of Social Science, in New York City. I attended a Communist Party leadership school set up within the Ray Freelander Youth Club of the Communist Party which I was a member of.

Q. Were you generally known around the ranch or at Taos under any other name other than Harvey Matusow?

A. I was.

Q. What did they call you, generally?

A. Harvey Matt.

Mr. Williams:

Pass the witness.

On Cross-Examination.

Questions by Mr. McTernan:

Q. Your name, you say, is Harvey Marshall Matusow?

A. That is correct.

Q. And you have often just signed yourself just "Harvey Matusow?

A. At times.

Q. And you have often given your name in proceedings similar to this as "Harvey Matusow", is that right?

A. That is correct.

Q. Now, when you use the name—withdraw that. When you are called "Harvey Matt", as counsel put it to you on direct examination, you yourself adopted that name in certain periods of your life, didn't you?

A. That is correct.

Q. And you represented yourself to be "Harvey Matt"?

A. That is correct.

Q. And signed yourself by the name, "Harvey Matt"?

A. That is correct.

Q. Did you use any other name?

A. Yes.

Q. What?

A. Ralph Page.

Q. When did you use the name, "Ralph Page"? I am talking about the year, now; what year or what period of time, measured by months or years?

A. I think I used it specifically on two or three occasions.

Q. In what year?

A. I think it was 1952.

Q. In Ohio?

A, That is correct?

Q. Now, you joined the Communist Party in October, 1947?

A. Approximately October.

Q. And you remained a member of it until sometime in January of 1951?

A. That is correct.

Q. When you joined the Communist Party you joined it out of conviction, did you?

A. I did.

Q. And at any time while you were a member did your convictions about the Communist Party change?

A. They did.

Q. When?

A. It is hard to say the specific month.

Q. Well, it began sometime in 1948, didn't it, this process of change?

A. Late 1948, summer.

Q. And sometime in January of 1950 your change-thinking got you to the point where you went to the F. B. I., isn't that right?

A. By late January or early February, 1950.

Q. And you went to the F. B. I you offered them any information you could concerning the Communist Party, didn't you?

A. I did.

Q. And you furnished them from time to time with information about the Communist Party between January or February of 1950 and January of 1951 when you were expelled?

A. That is correct.

Q. And during that period of about a year you also gave them reports on things that you knew about the

Communist Party before you volunteered your services as an informer for the F. B. I., isn't that right?

A. Yes, sir, I furnished them with some information.

Q. You furnished them with a complete report, didn't you?

A. No.

Q. Did you ever say it was a complete report?

A. Yes, I did.

Q. And you said that under oath, didn't you?

A. I used the word "complete"—

Q. Now, just a minute. Did you say a complete report under oath? Can you answer that "yes" or "no"?

A. A qualified "yes" or "No", yes.

The Court:

Answer it and then explain if you want to.

A. I answered that "yes". I was on the witness stand in New York in the Smith Act trial of certain Communist leaders. Mr. McTernan asked me if I had given the F. B. I. complete reports, and just in the matter of talk I said—well, he asked me if I had given them a report, I believe, and I said "yes, I had given them a complete report", in the sense that it covered my activities from 1947 through 1951 but not in the sense of putting every minute detail and every meeting in it.

Q. That is your explanation of your last answer, Mr. Witness?

A. That is.

Q. The only time that you referred to that as a complete report was when you were testifying in the Flynn case in New York, is that right?

The Court:

Pardon me, what case?

Mr. McTernan:

Flynn—U. S. v. Flynn.

A. To the best of my recollection that is the only time I referred to it as a complete report.

Q. Didn't you make a complete report in writing to the F. B. I. on your activities in the period before you went to the F. B. I. in order not to rely on your memory with reference to those matters?

A. What period of time are you referring to? That is, my giving them a report?

Q. Well, you went to the F. B. I. in January, 1950, right?

A. That is correct.

Q. And up to that time you had given the F. B. I. no report, right?

A. That is correct.

Q. And after you went to the F. B. I. you furnished them with a report, a complete report, in writing, of your activities for the period before you went to the F. B. I., isn't that right?

A. The word "complete" in the sense that it covered my activities in the Communist Party, not referring to every detail, yes, but I did not furnish them with that report when I first contacted them in writing.

Q. It took you about a year to give them that report, didn't it?

A. Well, closer to two years.

Q. And it took you that much time because you wanted to make it complete, so that you wouldn't have to rely on your memory, isn't that right, Mr. Witness?

A. Sir, the word "complete" is not the correct term for it. "Comprehensive" report, not "complete."

Q. Now, you testified in a number of proceedings before I cross-examined you in New York in "U. S. v. Flynn", didn't you?

A. I have, sir.

Q. And one of them was testimony before the Subversive Activities Control Board in Washington in March of 1952, isn't that right?

A. That is correct, sir.

Q. Now, I will ask you if you gave this testimony before that Board on March 1, 1952—(To Mr. Williams): Page 11,084, line, 11, Mr. Williams.

Mr. Williams:

Go ahead.

Q. (Reading) "Question: Now, soon thereafter did you give a report on your activities prior to February, 1950? Answer: I did. Question:—" Now, the period prior to 1950 was the period before you went to the F. B. I., isn't that right?

A. That is correct, sir.

Q. (Read) "Question: How soon after your first interview did you give it to them; you say you didn't give it to them the first day; when did you give it to them? Answer: It took me a while to compile it. It was a few months, about a year thereafter. Question: It took you a year to give them the report? Answer: Yes. Question: It took you a year later to give them a report on your activities prior to February, 1950? Answer: A complete report. Question: A year later you gave them a complete report? Answer: Because I didn't want to trust to memory." Did you give that testimony?

A. Yes, I did.

Q. And you gave that testimony under oath, didn't you?

A. That is correct, sir.

Q. And your oath at that time was to tell the truth, the whole truth, and nothing but the truth, wasn't it?

A. That is correct, sir.

Q. Now, during the period from 1948, when you began to change your views about the Communist Party, until the time that you actually went over to the F. B. I., you talked to people about joining the Communist Party, didn't you?

A. I did.

Q. And you asked people to join the Communist Party, didn't you?

A. I did.

Q. And you sought to convince them to join the Communist Party by praising the Party and its program, didn't you?

A. I did.

Q. And by virtue of these conversations you induced people to join the Communist Party, didn't you?

A. No.

Q. Didn't you recruit people into the Communist Party?

A. Yes, sir.

Q. And having recruited them into the Communist Party didn't you turn their names over to the F. B. I.?

A. A few people, yes.

Q. In fact, you turned the names of all the people you recruited over to the F. B. I., didn't you?

A. There were only a few people, yes.

Q. Well, whether you recruited few people or many people, all that you recruited you turned their names over to the F. B. I., didn't you?

A. That is correct, sir.

Q. And this was during the period that you were contemplating becoming an informer for the F. B. I., isn't that right?

A. No, that cannot be answered "yes" or "no" because—

The Court:

Answer it first and then explain if you want to.

A. The answer is no because then during that period I had not made up my mind to contact the F. B. I. It was a matter of whether or not I was going to break the Communist Party. That was late 1948, when I did recruiting for the Communist Party.

Q. When you testified before the Subversive Activities Control Board you didn't have to make that qualification, did you, Mr. Witness?

A. Well, I am not familiar with the testimony.

Q. You don't recall what you said there?

A. No.

Q. Well, I will ask you if you gave this testimony—

Mr. McTernan:

Page 11,097, Mr. Williams.

Mr. Williams:

All right.

Q. I will begin on Page 11,096, the last question (reading) "Question: When did you start contemplating going to the F. B. I.? Answer: Away back in 1948. Question: 1948, so this was prior to your obtaining recruits for the Communist Party, isn't that right? Answer: Some, yes. Question: So then when you did tell these people that the organization was a good one you were lying to

them at that time, were you not?"—That is on Page 11,097 now—"Answer: I don't think that can be answered with a yes or no answer. Question: Is that the best answer you can give us now? Answer: I will not answer yes or no I was lying to them. I still believe in FEPC, and I still believe in certain things that were advocated by this organization, and that is what I sold these people, an advocacy of these things that you mentioned before. Question: Yes, but you asked them to join the Communist Party at the time you were contemplating becoming an informer against the Communist Party, did you not? Answer: Yes, I did. Question: Yes, and in so doing you weren't sincere in asking them to be members of the Communist Party, were you, you were misleading them, weren't you? Answer: As you have it, yes. Question: And then you turned in their names to the F. B. I., did you not? Answer: Yes." Did you give that testimony?

A. I did.

Q. And that testimony was given by you when you were under oath to tell the truth, the whole truth, and nothing but the truth, wasn't it?

A. That is correct.

Mr. Williams:

Your Honor, I submit this is not proper ground for cross-examination. His answer now is the same as it was then.

Mr. McTernan:

I submit to the Court that counsel—

The Court:

Anyway, this is cross-examination and the objection is overruled.

(At this point a fifteen minute recess was taken, until 10:50 A. M., at which time proceedings were resumed as follows):

(The witness Matusow resumed his seat on the witness stand and cross-examination by Mr. McTernan continued)

Q. Now, let us go back a moment to this question of the completeness of your reports to the F. B. I. concerning your activities before you became an informer for the F. B. I. You testified in the Flynn case, in response to a question I put to you that it was true that the report you gave on your activities prior to January, 1950, was a complete report, didn't you?

A. I can answer that "yes" or "no" with—

Q. You can't answer that "yes" or "no"?

A. I can, and then qualify it, if I can?

The Court:

Yes, answer it first.

A. The answer is "yes", I did testify and used the word "complete", but only in the sense that it was a comprehensive report and dd not cover every discussion and meeting which I had with every individual who I met while I was in the Communist Party.

Q. Let me ask you if you gave this testimony in the Flynn case—

Mr. McTernan:

Do you have a copy of the record, Mr. Williams? You want to look at it? (Showing same to counsel)

Mr. Williams:
No.

Q. Now, on Page 6927, this is "United States vs. Elizabeth Flynn", C136-27, United States District Court, Southern District of New York. (Reading) "Questions by Mr. McTernan: Question: It is true, is it not, that after February of 1950 you gave the F. B. I. a complete report on your activities in the Communist Party prior to February, 1950? Answer: It is true." You recall giving that testimony?

A. Yes.

Q. And you didn't make any qualification at that time about the meaning of the word "complete", did you?

A. I believe I did.

Q. Well, look at the transcript, Mr. Witness. (Indicating.) It begins at the bottom of Page 6927, right here (indicating), and I ask you, at that time did you make any qualification about the meaning of the word "complete"?

Mr. Williams:
I submit that means in that case.

Mr. McTernan:
I want to know if at that particular time.

Mr. Williams:
I mean, the whole record should be included.

Mr. McTernan:
We will include the whole record.

The Court:

He says he will include the whole record. This is cross-examination.

Mr. Williams:

Can't the witness qualify his answers as he sees fit?

The Court:

He has already qualified his answer that he meant "ccmprehensive" instead of "complete". The question is now at that particular moment or time did he qualify it or not; not sometime later at the trial, at that particular time did you qualify it?

A. No, sir.

Q. Now, following your giving of that answer—withdraw that. When you gave this answer that I just called your attention to where you did not qualify the meaning of the word "complete" you were under oath to tell the truth, the whole truth, and nothing but the truth, weren't you?

A. That is correct.

Q. Now, following your giving that answer do you recall that the judge in that case directed that the Government give the defense attorneys access to that report that you said you wrote?

Mr. Williams:

Your Honor, that is absolutely immaterial and irrelevant.

The Court:

We are not going to try that case again.

Mr. McTernan:
But we are going to try this question of qualification. I gave my word to the Court that I was going into the question of qualification.

The Court:
If he remembers what happened at that time when he was on the stand the Court will permit it.

Mr. Williams:
I submit that what a judge did in another case is not material in this case.

The Court:
The Court doesn't think so either.

Mr. Williams:
And it is not the proper subject of cross-examination and I therefore object to that question.

The Court:
It is going now to his memory, his interest and his qualifications.

Mr. Williams:
You are going to let him say what the judge did?

The Court:
Let him say what he remembers he testified to.

Mr. Williams:
That isn't the question. The question is what the judge did.

The Court:

Objection overruled.

A. Specifically, what is the question, Mr. McTernan?

Q. I will reframe the question to save time. After you gave that answer, sometime after you gave that answer, while you were still on cross-examination in that case, the judge gave me, as one of the defense lawyers, access to this report of yours to the F. B. I. that you referred to in that answer, didn't he?

A. Are you referring to the whole report or parts of it?

Q. Parts of the report?

A. Yes, he gave you access to parts of the report.

Q. Parts of the report that dealt with matters that you were testifying to in that proceeding?

A. I believe so, yes.

Q. And it developed on cross-examination that in four of the things that you had mentioned on cross-examination there was no reference to them in your report, isn't that right?

A. No, I don't know if that is right or not.

Q. Do you recall that in the cross-examination it developed that there was no reference in your report to the F. B. I. of several of the things you testified on direct examination in that case?

Mr. Williams:

I object to this question. We could be here two weeks trying and re-hashing this other case.

The Court:

No, we won't try that case again, but, as the Court understands, he is laying the ground for impeachment.

Mr. Williams:

Then what the judge did and what the record shows, the record is the best evidence.

The Court:

What the judge did is not binding on this Court in this trial.

Mr. McTernan:

Of course not. I am trying to refresh his memory.

The Court:

He is testing his memory.

Mr. Williams:

What he did is in the record and that is the best evidence; whether this witness remembers those details or not is immaterial.

The Court:

He is asking about what the record that was introduced at that trial shows, and whether it was complete or not. Objection overruled.

Mr. Williams:

He is asking what this witness remembers about it and he's got the record in front of him.

The Court:

Yes, but he has a right to lay the ground for impeachment, if he can, to test his memory. The Court hopes counsel don't go into unnecessary detail and try that case over, but if he wants to ask him what he said or what happened on the witness stand to refresh his memory the Court will permit it.

The Witness:

(To Mr. McTernan). Mr. Attorney, will you please restate your question?

The Court:

I don't think there was a question to you at the moment.

Q. Isn't it a fact that after you gave your answer under oath that your report to the F. B. I. was complete, and you said that without qualification, it developed in the course of your cross-examination that the report contained no reference to certain of the things which you had testified to in your direct examination?

A. Well, for one, I did not use the term "complete"; you did.

Mr. Williams:

Just a minute. I submit that that is not impeachment testimony.

The Court:

It is a question of what he testified about in that trial about a complete report, and as the Court understands it, he first testified that the report was complete and it seems to the Court that counsel is trying to bring out that he then testified that the report was not complete.

Mr. Williams:

He is saying about what does the report show and he's got it in his hand.

Mr. McTernan:

I will advise counsel that it is impossible for me to ask the whole line of examination in one question.

The Court:
Well, let's get through.

Mr. McTernan:
I will try to get through as soon as I am permitted.

Q. I will reframe the question. It is true that in the Flynn case you testified on direct examination to certain matters, talks and things, which occurred prior to the time you went to the F. B. I. and offered them information, isn't that right?

A. That is correct.

Q. And in the course of the cross-examination your report to the F. B. I. dealing with those subjects was turned over to the defense for purposes of cross-examining you, isn't that right?

A. Sections of the report that dealt with my testimony were turned over, yes, sir.

Q. On the ground that the report contradicted the statements you made on your direct examination, isn't that right?

Mr. Williams:
Now, just a minute, can this man express his opinion as to whether or not it was on that basis that the judge admitted it?

The Court:
Not the basis itself of the admission by the judge.

Mr. Williams:
That is his question.

The Court:
Objection overruled.

Mr. Williams:

May we have the question read?

Mr. McTernan:

Your Honor, this constant arguing after your rulings is simply destroying my examination.

The Court:

Objection overruled.

Mr. Williams:

May he read the question?

The Court:

Objection overruled.

Mr. McTernan:

I will reframe the question in order to get out of this.

The Court:

All right, let's confine it to contradictions or grounds of impeachment, if that is what you are trying to establish.

Q. Isn't it a fact that on the cross-examination of you, on the basis of that report it was developed that things that you testified to on your direct examination about those pre-1950 transactions weren't mentioned in your report?

A. No. My recollection, sir, is that there were three or four, I forget the exact number, of the sections of that report which were not masked over and given to you in relation to matters which I testified to on direct examination. However, they were not as complete as my direct examination. They did not go into all the

detail. They just referred to what I had testified to on direct examination.

Q. As a matter of fact, on some of those things there wasn't even a mention of them in your report, isn't that right?

A. Sir, I wasn't—

Q. Can't you answer that "yes" or "no"? You were there?

A. I was about to say I was not in the Courtroom while the arguments were going on about the report. I was away from the Courtroom.

Q. You were in the Courtroom when the report was read in your presence to the jury, weren't you?

A. Sections of my report dealing with my cross-examination, yes, sir.

Q. You recall now, don't you, that in the case of three or four of those instances you mentioned on your direct examination there was no reference to them in your report?

A. I don't recall that, sir, no.

Q. Well, do you remember testifying on your direct examination in that case to a speech by Pettis Perry on the negro question?

A. I believe I did.

Q. And do you recall that when your F. B. I. report was brought out and read that you admitted that you hadn't reported to the F. B. I. on Perry's speech?

A. It is possible.

Q. Well, look at the transcript, if you will, on the Flynn case, Page 7094, to refresh your recollection. (Hands same to witness.) And when you do then I want to ask you a question.

A. All right, sir.

Q. Now, you testified there on cross-examination this way, didn't you—this is Page 7089—(Reading). "Ques-

tion: You also testified on your direct examination about a meeting addressed by Pettis Perry in December, 1948? Answer: I did." You gave that testimony, didn't you?

A. I did, sir.

Q. And at Page 7093, after some more questions about that Perry meeting and your F. B. I. report, didn't you testify this way? (Reading.) "Question: Now, in giving this complete report to the F. B. I. on your activities in the Communist Party prior to February, 1950, did you make any reference to this meeting addressed by Mr. Perry? Answer: I don't believe so. Question: Your best recollection is that you did not, isn't that right? Answer: That is correct." Did you give that testimony?

A. Yes, sir.

Q. And you gave that testimony under oath to tell the truth, the whole truth, and nothing but the truth, didn't you?

A. Yes, sir.

The Court:

Let's just say that he was under oath. He has said that two or three times.

Mr. Williams:

I submit that isn't that exactly what he testified to?

Mr. McTernan:

May we be relieved of this kind of argument during trial?

The Court:

Yes, the jury will pass on that.

Q. Now, there were other instances where you mentioned things in your direct examination in the Flynn

case concerning the period before you went to the F. B. I. which weren't contained in the complete F. B. I. report, isn't that right?

A. Sir, it wasn't a complete report. A comprehensive report.

Q. Let me put it this way, there were things in the direct examination of you in the Flynn case for the period before you went to the F. B. I. which weren't contained in the report which you said under oath was complete, isn't that so, can you answer that "yes" or "no"?

A. There were things, undoubtedly, of course.

Q. And it was only after it was brought out on your cross-examination that the things you testified to on your direct examination in the Flynn case were not contained in your F. B. I. report that you first testified that when you said it was complete it didn't mean complete but only comprehensive, isn't that right?

A. I stated so then.

Q. Only after these discrepancies were brought out, isn't that right?

A. They were not discrepancies, sir.

Q. You don't regard it as a discrepancy to say that a report is complete and then to have it pointed out about things not contained in it that occurred in the period for which the report speaks; can you answer that "yes" or "no"?

A. That is a splitting of hairs in the English language.

Q. I haven't asked you about your opinion of splitting hairs. I asked you for the truth.

Mr. McTernan:

May the question be read to the witness?

The Court:
Read the question, Mr. Reporter.

(The reporter complied).

A. A qualified "yes" or "no".

The Court:
Answer it first and then you can explain if you want to.

A. The answer is "yes", they could be termed "discrepancies", but what Mr. McTernan has not said is that the other items, the other four or five items, were corroborated. And on something like the Pettis Perry meeting, it was reported in the "Daily Worker", and it was on the basis of going through some back issues of my "Daily Worker" before that trial that I was able to find that Mr. Perry had spoken at the meeting, which I did not recall when I wrote the report.

The Court:
All right, let's get through with this part here.

Q. But you will concede, won't you, Mr. Witness, that you qualified the description of the report as complete only after it had been demonstrated on cross-examination from the report itself that it was not complete?

A. Only when I realized that I meant "Comprehensive" and you meant "Complete", yes.

Q. Now, you say you have lived in New York most of your life, is that right?

A. A greater part of it, yes.

Q. And do you live there now, do you?

A. I do.

Q. Now, in 1951, namely, October 13, 1951, you gave your address as 1491 Macombs Road, Bronx, when you registered to vote, didn't you?

A. October 13, 1951?

Q. Well, perhaps you can't recall that precise date?

A. Yes, I did, I believe I did, on an absentee ballot. I was in the Air Force.

Q. Now, was that your residence, 1491 Macombs Road, at that time, your voting residence?

A. On that date it was.

Q. In the following January, namely, January, 1952, you registered to vote in Dayton, Ohio, didn't you?

A. Can I qualify that?

Q. Can't you answer that "yes" or "no"?

A. Yes, with a qualification.

Q. You mean you can't answer that "yes" or "no" without a qualification?

A. Well—

Mr. McTernan:

Your Honor, I submit that on a simple question like that a man can simply say he registered to vote or didn't.

The Court:

He said he did.

The Witness:

Can't I qualify my answer.

Mr. McTernan:

I think that answers it.

The Court:

The Court will let you make a little explanation.

A. I was living in Dayton, Ohio, at the time, working on the Ohio un-American Activities Committee. I was told—

Mr. McTernan:
We object to any conversations.

A. I was under the impression if I was living in the state of Ohio one year on election day in 1952, having been told this by the Chairman of the Board of Elections—

Mr. McTernan:
I move to strike that and I ask that this witness be directed to keep these conversations out of the testimony.

The Court:
Yes, the jury will disregard that part of his answer.

Mr. Williams:
Can't the witness explain why he registered there?

The Court:
Not what somebody told him.

Mr. McTernan:
I think that the question, "Did you register to vote" doesn't require an explanation as to why. I submit every citizen in this country knows why he registered to vote.

The Court:
I think in all fairness to the witness he can state why he registered in Ohio at that time, without stating any conversation, without quoting anybody.

A. I was under the impression that by living in the state of Ohio on Election Day, 1952, I would have established residence, in order for me to vote in the Primary, which was earlier in the year. I registered in January thinking that the law, the requirements of the law, were fulfilled and finding out later I was wrong in that.

Q. You filled out a questionairie when you registered, didn't you?

A. That is correct.

Mr. McTernan:

I offer as Defendant's Exhibit next in order a Certification and copy of the voting registration record of Harvey M. Matusow, 1308 Grand Ave., Dayton, Ohio.

The Court:

It will be admitted in evidence.

Mr. Williams:

We object to it as being immaterial and irrelevant, not a proper ground for impeachment, relating entirely to a collateral matter, and not relating to this case in any manner.

The Court:

Objection overruled.

Mr. McTernan:

May the record show that the document offered consists of two pages and it has been marked in evidence as Defendant's Exhibits 24 and 24-A.

The Court:

Yes.

DEFENDANT'S EXHIBIT 24, having been received in evidence by the Court, reads in words and figures as follows:

"D-24".

Clerk of the Court

Of Common Pleas

Montgomery County, Ohio

I, Clerk of the Common Pleas Court, the same being a Court of Record, do hereby certify that Eli Walker, who signed the attached copy of a record of the Board of Elections of Montgomery County, Ohio relating to the registration and voting of Harvey M. Matusow in 1952, is Clerk of said Board of Elections, and has custody of the original of such record.

(S.) A. O. PAUL,
(A. O. Paul),
(Seal) Clerk of Courts.

DEFENDANT'S EXHIBIT 24-A, having been received in evidence by the Court, reads in words and figures as follows:

"D-24A".

Board of Elections

For Montgomery County

1618 North Ludlow Street

Dayton 2, Ohio

Members
Howard G. Young
Albert A. Horstman
Peiree Wood
Fred L. Van Allen

Howard G. Young
Chairman
Eli Walker
Clerk
Floyd Hale
Deputy Clerk

January 4, 1954

Copy

To Whom It May Concern:

I hereby certify that Harvey M. Matusow, living at 1308 Grand Ave., Dayton, Ohio, which is in the 5th Ward, Precinct N, subscribed and swore to the following affidavit:

Will you have resided, on day of next election, in State one year? Answer—yes

In county 40 days? Answer—yes.

In precinct 40 days? Answer—yes.

Place of Birth—Bronx County, New York

Age—21 years or over at next General Election?

Answer—yes

Residence from which last registered or voted.

Answer—Bronx County, New York

Date subscribed and sworn—January 31, 1952.

Harvey M. Matusow—Voted in the Primary Election, held on Tuesday, May 6, 1952.

Very truly yours,
BOARD OF ELECTIONS MONTGOMERY COUNTY, OHIO.
(S.) ELI WALKER,
(Eli Walker),
Clerk.

EW:11b

• • • • • • • •

Q. Now, look at this for a moment to refresh your recollection. (Hands document to witness.) Now, when you registered to vote there in Ohio you gave certain information to the Election Board under oath, didn't you?

A. That is correct.

Q. And you stated under oath that on the date of the next election you would have resided in the state of Ohio one year, didn't you?

A. That is correct, sir.

Q. And you swore to that on January 31, 1952, didn't you?

A. That is correct, sir.

Q. And you voted in the Primary election on May 6, 1952, isn't that right?

A. That is correct.

Q. And you read this affidavit carefully before you swore to it, didn't you?

A. That is correct, sir.

Q. And you knew, didn't you, that you were swearing that you would be a resident of the state of Ohio for one year prior to May 6, 1952, or from May 6, 1951 to May 6, '52?

A. No, sir.

Q. You didn't know that?

The Witness:

Can I answer that with a qualification?

The Court:

Yes.

A. The answer is yes, I knew I wouldn't be there one year but I was under the misconception that the date referred to was the next general election, which was November.

Q. November of 1952?

A. That is correct.

Q. And when did you move to Ohio?

A. I was transfered to Dayton, Ohio in I believe May of 1951, from Brooks Air Force Base, San Antonio, Texas, to Wright-Patterson Field.

Q. So you gave an absentee ballot of registration in New York—

A. October 13, sir.

Q. October 13, 1951, that your residence was 1491 Macombs Road, right?

A. It was, sir.

Q. And in January of '52 you gave an affidavit that your residence had been in Ohio for one year prior to November, 1952, as you thought, is that right?

A. That is right.

Q. You didn't perceive any discrepancy between those two statements?

A. At the time, no, sir.

Q. No. Now, you registered in New York on September 12, 1952, didn't you?

A. I did, sir.

(Mr. McTernan shows documents to Mr. Williams).

Q. And when you registered there you signed another affidavit as to the length of your residence, didn't you?

A. I did, sir.

Q. And in New York when you registered you gave your residence under oath, didn't you?

A. Sworn, yes, sir.

Q. And then on Election Day when you went to vote, did you vote that year?

A. I believe I did, sir.

Q. And when you went to vote that was in November, wasn't it?

A. Absentee ballot, as I recall.

Q. You don't remember going to the polling place and writing your name and address in the voters' register, voters' roll, rather?

A. My recollection is that I applied for absentee ballot in 1952.

Mr. McTernan:

We offer, Your Honor, as Defendant's Exhibit next in order the certified and attested registration and voting record of Harvey M. Matusow in the County of New York, State of New York, for the year 1952.

Mr. Williams:

We object to its admission for the reasons stated. It is hopelessly immaterial and has no bearing on this case.

The Court:

Objection overruled.

Mr. Williams:

And we would be here all the rest of the year if we would go into all of these things.

The Court:

We will take a chance on that. Objection overruled. As the Court understands it, it is offered for purpose of impeachment.

(The exhibits were marked "D-25", "D-25A", and "D-25B").

Mr. McTernan:

May the record show that the document consists of three instruments which have been marked in evidence as Defendant's Exhibits 25, 25-A, and 25-B?

The Court:
Yes.

DEFENDANT'S EXHIBIT 25, having been received in evidence by the Court, reads in words and figures as follows:

Board of Elections in the City of New York

No. 211 Borough Office

Jan. 11, 1954.

This Is To Certify that the following entry appears on the Register of Voters of the 14 Election District 1 Assembly District, in the City of New York, for the year 1952.

Name Harvey M. Matusow

Residence 141 West 10 St.

Date of Registration September 12, 1952

Age 26

Length of Residence—State 26 County 26 Election District 6 mos.

Nativity—Country United States

Date of Naturalization .....

Court Issuing Naturalization Certificate .....

When Last Registering, Lived at—State New York

City or Town New York Street 1491 McConell

Year of Last Registration 1951

Location of Business .....

Purpose of Transcript Proof of registration and voting for U. S. Dist. Court Santa Fe, N. M. Litigation only.

Board of Elections in The City of New York

(S.) THOS. MALLEE,

(Seal) Chief Clerk.

• • • • • • • •

DEFENDANT'S EXHIBIT 25-A, having been received in evidence by the Court, reads in words and figures as follows:

"D-25A"

No. 13088

State of New York,
County of New York, ss.

I, Archibald R. Watson, County Clerk and Clerk of the Supreme Court, New York County, the same being a Court of Record, having by law a seal, Do Hereby Certify, that Thos. Mallee before or by whom the annexed record was signed, was at the date thereof Chief Clerk,

Board of Elections, City of New York in and for the County of New York, duly appointed and sworn, and that full faith and credit are due to all his official acts; And, further, that I am well acquainted with the handwriting of such official or have compared the signature of such official with that deposited in my office and believe that the signature to the annexed record is genuine.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 11 day of January 1954.

(S.) ARCHIBALD R. WATSON,
County Clerk and Clerk of the Supreme Court, New York County.

DEFENDANT'S EXHIBIT "D-25B", having been received in evidence by the Court, reads in words and figures as follows:

"D-25B".

I, Samuel H. Hofstadter a Justice of the Supreme Court of the State of New York for the County of New York, the same being a Court of Record, do hereby certify that the foregoing attestation is in due and proper form and by the proper officer.

Dated, New York, January 11th 1954.

(S.) SAMUEL H. HOFSTADTER,
Justice of the Supreme Court of the State of New York.

State of New York,
County of New York, ss.

I, Archibald R. Watson, County Clerk and Clerk of the Supreme Court of the State of New York, County of New York, do hereby certify that Hon. Samuel H. Hofstadter whose name is subscribed to the preceding certificate is a Justice of the Supreme Court of said State in and for the County of New York, duly elected and qualified, and that the signature of said Justice to said certificate is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of Said County and Court this 11th day of January 1954.

(S.) ARCHIBALD R. WATSON,
County Clerk and Clerk of the Supreme Court, New York County.

No. C 682

. . . . . .

Q. Now, when you took the oath in Ohio about your residence you were under the impression, as I understand your testimony, that your residence in Ohio was continuous up until November of 1952, is that right?

A. Was continuous from November, 1951, not up to it.

Q. From November, 1951 to November, 1952, is that right?

A. That it would have been, yes.

Q. Now, from November, 1951 to November, 1952, right?

A. That is correct.

Q. Now, you stated under oath in New York in September, 1952, that your residence had been in New York State and New York County for twenty-six years, isn't that right?

A. State and New York County, I think I stated Bronx County for part of that time.

Q. I call your attention to that portion of the exhibit (indicating) which says, "Date of Registration, September 12, 1952. Age, 26. Length of Residence—State, 26; County, 26; Election District, 6 mos." Does that refresh your recollection that you stated to the Election Board under oath in New York that you had been a resident of New York County and New York State for twenty-six years?

A. On the same application it gives the Bronx address for last voting place and it couldn't possibly be that I was in New York County.

Q. I call your attention to the fact that the certified record says that you stated that your residence had been twenty-six years in New York State and twenty-six years in New York County. (Indicating.) Do you say that you didn't say that to the Election Board under oath?

The Witness:
May I qualify that again?

The Court:
Answer it first.

A. The answer is I did not state that because I had to list the previous voting which took place in Bronx County and not New York County, and it states on that application the address of the Bronx County, 1491 Macombs Road, as last voting place.

Q. Show me that? (indicating.)

A. Macombs Road happens to be misspelled.

Q. The entry on this record reads: "When Last Registering, Lived at—State, New York; City or Town, New York; Street, 1491 McConell", isn't that right?

A. Well—

Q. Isn't that what it says there? (Indicating.)

A. That's what it says there.

Q. You say that the official record is in error?

A. I will say whoever transcribed it wrote it wrong.

Q. You are satisfied, are you, that the certified record here is incorrectly stated?

A. I am, sir.

Q. In New York when they indicate "County" they make a distinction between New York County and Bronx County, don't they?

A. They do.

Q. Do you say when they entered "New York" in here (indicating) that it was a mistake that the person made who received this record?

A. I do, sir.

Q. Now, within a year of that time, within a year of the general election in New York you also stated your residence to be in Santa Fe, New Mexico, also under oath, didn't you?

A. Pardon me, sir, in what time?

Q. Within a year after the general election in New York in 1952 you stated that your residence was in Santa Fe, New Mexico, didn't you?

A. That I had a residence there, yes, sir.

Q. And you stated that you had been a resident of New Mexico for more than a year, didn't you?

A. I stated I had been, yes, sir.

Q. Do you find any conflict, Mr. Witness, between stating under oath in New York in November that you were a resident of New York, and stating within a year

of that in New Mexico that you had been a resident of New Mexico for more than one year?

A. No, sir.

Q. You don't?

A. No.

Q. But you do admit that that is the oath that you made in New Mexico?

The Witness:

May I qualify it again, sir?

The Court:

All right.

A. Yes, I stated that in New Mexico because I maintained a residence in New York and had maintained a residence in New Mexico for over a year. It was a divorce proceeding and when I found out I had illegally filed for divorce I dropped my divorce suit.

Q. Now, during this period of a year, prior to stating that your residence was in New Mexico for more than one year last past you had testified under oath in a number of proceedings, hadn't you?

A. That you lived in New Mexico?

Q. Will you answer my question as I frame it? If you don't mind it, I will frame the question and you frame the answer. My question to you was this, you stated under oath in Santa Fe, New Mexico, in September of 1953, that you had been a resident of New Mexico for more than one year prior thereto, right?

A. That is correct, sir.

Q. Now, in that year you had testified in a number of proceedings under oath, had you not?

A. In 1953? Yes, sir.

Q. And in that time you gave your residence as Dayton, Ohio, didn't you?

A. In 1953? I don't know which year you are talking about, sir?

Q. Mr. Witness, the year last past prior to September, 1953, when you said in the oath that you gave the New Mexico Court that you had been living in Santa Fe, New Mexico during that year that you said you had been living in Santa Fe, New Mexico, you had been giving your address under oath as Dayton, Ohio, hadn't you?

A. I believe New York City was the address I had given under oath in 1953.

Q. Well, the year prior to September, 1953 goes back to September, 1952. Now, do you recall giving your address as Dayton, Ohio, within that twelve-month period?

The Witness:

Can I qualify that?

The Court:

Yes.

A. I gave Dayton, Ohio, as an address in the case of the United States against Elizabeth Flynn because of the fact that the Communist Party could not guarantee me protection. Therefore, I was giving Dayton, Ohio, as an address. I no longer had that as an address in the trial of the Communists, in the Smith Act trial of the United States Governments of these Communist leaders, and Mr. McTernan had issued a subpoena for me in behalf of the defendant, after I had been a Government witness, and he wanted me to appear, and I said, "I am living in Dayton—"

Mr. McTernan:
Your Honor, this has nothing—

The Court:
(To witness). The Court thinks you have answered it.

The Witness:
All right, sir.

Q. So your recollection is that you stated under oath in the Flynn case that your residence was in Ohio?
A. No, I didn't state that under oath, Mr. McTernan.

Mr. McTernan:
(To reporter). Will you read the last answer, this long explanation?

The Reporter (Reads):
"I gave Dayton, Ohio as an address in the case of the United States against Elizabeth Flynn. . . ."

Mr. McTernan:
That is enough.

Q. Now, when you gave your residence as Dayton, Ohio, in the case of Elizabeth Flynn were you testifying under oath?
A. I was.
Q. As a matter of fact, you gave your residence as the Bronx, New York, in the case of Elizabeth Flynn, didn't you?

The Witness:
Can I qualify that?

The Court:

Yes.

A. The answer is yes, but Mr. McTernan had a certified check made out to pay me transportation, at one point, he knows I gave Dayton as an address.

Q. I show you the Flynn transcript, Page 6565, the first question you were asked in the Flynn case (indicating). Will you read it to yourself for the purposes of refreshing your recollection?

A. Yes, sir.

Q. Now, you were called as a witness in that case by the prosecution, not by me?

A. By both you and the prosecution.

Q. At the time you were testifying under oath, at Page 6565, you were called by the prosecution only, weren't you?

A. That is correct, sir.

Q. And at that time you were asked this question and you gave this answer, isn't that so? (Reads.) "Question: Now, Mr. Matusow, where do you live, please? Answer: The Bronx, New York." Did you give that testimony in the Flynn case?

A. I did, sir.

Q. And that was on July 21, 1952, right?

A. That is correct, sir.

Q. And in September, 1952, you swore under oath to the Election Board that your residence was in New York County, Manhattan, isn't that right?

A. I still say there is a discrepancy in that report that you have there.

Q. Which report?

A. The certified copy of the New York County Registration.

Q. Do you say—I am reading from the record now, Defendant's Exhibit 25—that you did not say to the Election Board on September 12, 1952, that your name was Harvey M. Matusow, that your residence was 141 West 10th Street, New York County, or Manhattan?

A. I admit that I registered and voted there. This is not a correct certification of my registration.

Q. Now look, Mr. Witness, did you say to the Election Board on September 12, 1952, that your name was Harvey M. Matusow, and that you resided at 141 West 10th Street, New York County, or Manhattan?

A. I did.

Q. And only two months before you testified under oath that your residence was the Bronx County, New York?

The Witness:

Can I qualify that again?

Q. Will you answer that "yes" or "no"?

The Court:

Answer "yes" or "no".

A. I had testified that way, yes.

Q. Now, it was after you gave that answer is Bronx, New York, and sometime later in the course of your testimony that I served the subpoena on you, isn't that right?

A. A few months later, yes, sir.

Q. And at that time you told me your residence was in Dayton, Ohio?

A. For the reasons I stated, yes.

Q. And you wanted me to pay you money to cover what you called "travelling expenses" from Dayton, Ohio, to New York?

A. I wanted to put you through the inconvenience of getting—

Q. Will you answer "yes" or "no"? You wanted me to pay you?

A. No, sir.

Q. You testify that you didn't ask me to pay you?

A. You asked me whether I wanted you to pay me. The answer is no.

Q. Did you ask me to pay for your travelling expenses from your alleged residence in Dayton, Ohio, at the time I subpoenaed you?

A. I asked you to do it, yes.

Q. And at the time you were under oath in the Flynn case as being a resident of the Bronx, New York, and under oath with the Election Board as being a resident of Manhattan, New York, isn't that so, can't you answer that "yes" or "no"?

A. Yes, I can answer that yes.

Mr. Williams:

May he explain if he cares to?

Mr. McTernan:

I don't know that counsel has to lead a witness while he is being cross-examined.

Mr. Williams:

I am speaking to the Court, not you.

The Court:

This witness is an intelligent witness. If he wants to explain an answer after he has answered it the Court will permit it.

The Witness:
I would like to do that very much.

The Court:
All right.

A. When I got on that witness stand I had a legal residence, not a voting residence, in the Bronx. As I stated before, the Communist Party did not offer me protection when I was testifying and I did not intend in any proceedings to give my correct address where the Communist Party could get ahold of it. That is the reason I stated the Bronx. I was on the stand longer than they had expected. It was because of that that I changed my residence from Dayton, Ohio, in the month of June, 1952, or early July, still maintaining a postoffice box out there and a residence, throughout this trial; when I asked Mr. McTernan to give me a check for transportation it was just for the purpose of frankly causing him an inconvenience; and I am just telling the jury the whole story. The money he did pay me for witness fees went to the Damon Runyon Cancer Fund, and if I had gotten that money from him it would also have gone to charity.

Q. You didn't get any money from me?

A. I got twelve dollars.

Q. But the money that you asked for travel from Dayton you didn't get?

A. No.

Q. And you offered to submit to the Court the question of your residence as to whether it was Dayton, Ohio, or New York?

A. I recall telling you that in your office.

Q. And you were in Court when I asked the Court to determine the question for you, weren't you?

A. I believe, sir, it was never raised.

Mr. Williams:

Isn't there any limit to this?

The Court:

The Court hopes so, but for the present he will overrule the objection. It still goes to the matter of impeachment. He hopes this part of the testimony is reasonably brief.

Q. I want to go into this matter of your explanation, Mr. Matusow. As I caught your testimony just a minute ago it was that you never did give a correct street address—withdraw that. As I understood, your testimony was that you didn't give a street address when you testified in that proceeding because you were afraid of what the Communist Party might do to you?

A. Not to me as such, but just annoyance. The Communist Party didn't give me a guarantee to protect me.

Q. So you made a practice, ever since you have been testifying, not to give a street address?

A. That is correct.

Q. And that is because the Communist Party wouldn't give you protection?

A. Couldn't guarantee it, that is correct. I didn't trust them.

Q. Do you recall testifying in February, 1952, before the House Committee on un-American Activities?

A. Yes, and I stated 1308 Grand Avenue, Dayton, Ohio, on Page 2.

Q. In February, 1952?

A. That is correct.

Q. And you recall testifying before the Permanent Sub-Committee on investigations of the Committee of Government operations of the United States Senate in May of 1953—I am sorry, withdraw that. I picked up the

wrong record. You recall testifying before a Sub-Committee of the Committee on the Judiciary of the United States Senate?

A. On March 7th?

Q. In February of 1952?

A. February? I don't think so, sir. I believe my first testimony was the 7th or 6th of March, 1952. I may be wrong.

Q. I will ask you if you testified before the Sub-Committee to investigate the administration of the Internal Security Act and other security laws, of the Committee under the Judiciary, on Wednesday, February 13, 1952, as follows: "Will you kindly identify yourself by name, residence, and occupation? Mr. Matusow: Harvey M. Matusow, 1308 Grand Avenue, Dayton 6, Ohio." Did you so testify?

A. Yes, I did.

Q. That was under oath also, wasn't it?

A. It was.

Q. And the testimony before the House Committee on un-American Activities was under oath too?

A. One qualification is necessary.

The Court:

All right.

A. Well, on the 24th, I believe, of January of that year, my father, on his way home from work, was beat up severely and almost killed—

The Court:

We won't go into that.

Mr. McTernan:

I move to strike that testimony and the jury be instructed to disregard it.

The Court:
Yes, that testimony will be stricken and the jury is instructed not to consider it.

Mr. McTernan:
I submit to the Court that on these simple matters explanations of this kind are not necessary.

The Court:
Well, the Court wants him to answer the question first "yes" or "no", if he can, then if he wishes to make an explanation that is material and to the point the Court will permit him.

Mr. Williams:
Isn't that material to why he gave an incorrect address?

The Court:
No.

Mr. Williams:
Isn't that a good reason to not reveal your residence?

The Court:
Objection sustained—I mean, overruled, and the jury has been instructed to disregard it.

Q. Now, you also testified before another Sub-Committee on the Committee of the Judiciary, on March 5, 1952, didn't you?

A. I believe so, that is right, sir.

Q. And there you gave your residence by street address, didn't you, 1308 Grand Avenue, Dayton, Ohio (shows to witness); answer that "yes" or "no", please?

A. The answer is no. I can explain that without bringing violence into it.

Mr. McTernan:
I move to strike that observation.

The Court:
Yes. Motion is granted. The jury will disregard that.

A. I testified, sir, at a very informal hearing, and did not give a street address. The street address was gotten from previous testimony and inserted in the record without my having given it.

Q. I read from a transcript of the hearing before the Sub-Committee to investigate the administration of the Internal Security Act and other internal security laws on the Committee of the Judiciary, United States Senate, March 5, 1952; "Senator Watkins: Raise your right hand. Do you solemnly swear that the testimony you will give in the matter now pending before the Sub-Committee of the Committee on the Judiciary of the United States Senate will be the truth, the whole truth, and nothing but the truth, so help you God? Mr. Matusow: I do. Senator Watkins: You may proceed with the interrogation of the witness. Mr. Connors: Mr. Matusow, you have previously appeared before this Sub-Committee, is that right? Mr. Matusow: That is right. Mr. Connors: Will you identify yourself, please, by address, occupation, and background? Mr. Matusow: Harvey M. Matusow, 1308 Grand Avenue, Dayton 6, Ohio. . ." and so on. Now, do you say that is not a correct transcript of your testimony at that time and place? Answer "yes" or "no". Is it correct or isn't it?

A. That is a correct transcript, but—

Q. Thank you very much. Now, did you testify also before the Subversive Activities Control Board—

Mr. Williams:

The witness seemed to want to say something else there.

The Court:

If he wants to explain his position about the date having been supplied by somebody on account of previous testimony. I mean, the address.

Mr. Williams:

Now, Your Honor, are we going to bring the Chairman of that Committee down here to say whether or not he is telling the truth here today, or not?

Mr. McTernan:

I will let the jury decide if he is telling the truth when he said record after record is false.

The Court:

That is a matter for the jury to pass on. There will be no remarks by counsel on either side.

Mr. Williams:

Wasn't that a remark and a speech by counsel?

Mr. McTernan:

In response to one, Your Honor.

Q. You testified before the Subversive Activities Control Board on March 10, 1952, didn't you?

A. I did.

Q. And there you gave a street address also?

A. I believe so.

Q. 1308 Grand Avenue, Dayton, Ohio, is that right? (Shows document to witness.)

A. Yes, sir.

Q. And do you remember testifying before the Sub-Committee of the Committee on the Judiciary of the United States Senate on March 13, 1952?

A. I do.

Q. And you recall that in that testimony you also gave the street address as 1308 Grand Avenue, Dayton, Ohio?

A. That is correct.

Q. Nothing wrong with this record, is there? (Showing same to witness.)

A. No.

The Witness:

(To Court). Sir?

The Court:

Yes.

The Witness:

I didn't mean to state there was anything wrong with the other one. All I stated was that it was an informal hearing and after I was sworn in the address was inserted.

Mr. McTernan:

I submit that the witness is not permitted to make speeches from the witness stand. There was no question pending.

The Court:

No speeches. But he is permitted to explain what the truth was about it, or what happened in connection with it. He has done that now so can't we pass on, or get through now with this address business?

Q. Now, when you were out there in New Mexico were you still appearing to be a member of the Communist Party?

A. What period of time are you referring to, sir?

Q. In the summer of 1950?

A. I was still a member of the Communist Party, yes, sir.

Q. And you were also preparing reports to the F. B. I., weren't you?

A. I was.

Q. In writing?

A. Some in writing.

Q. Isn't it a fact that after January or February, 1950, when you began reporting to the F. B. I. you were reporting to them a minimum of once a week?

A. I tried to report once a week.

Q. And didn't you report to them a minimum of once a week in writing?

A. Writing and oral, sir.

Q. On Page 11,086, Subversive Activities Control Board. When you testified before the Subversive Activities Control Board, I ask you if you gave the following testimony under oath: "Question: How often have you reported to the F. B. I.? Answer: In that period that I was still in the Communist Party a minimum of once a week. Question: In writing? Answer: In writing." Did you give that testimony?

A. I am sure I did.

Q. Well, if there is any question that it was there—

A. I believe you.

The Court:

He says he believes you and that he did.

Q. Take a look. (Shows transcript to witness.) And while you were at the San Cristobal Valley Ranch you supplied information in your reports to the F. B. I., didn't you?

A. I did.

Q. And when you submitted your reports to the F. B. I. did you follow the instructions you had been given by the F. B. I. as to how to prepare those reports and what to put in them?

A. I did.

Q. And you were instructed, weren't you, to put in your reports everything relating to the activities of the Communist Party?

A. That is too broad a statement, no.

Q. Were you told to put in everything relating to the activities of the Communist Party no matter what it was so long as it related to the activities of the Communist Party?

A. Factual information, such as names—

Q. Can't you answer my question? You can't answer my question "yes" or "no"?

A. Yes, I was told to put that in.

Q. I will ask you if you gave this testimony before the Court in the Flynn case, Page 6920: "Question: Well, were you told to report everything that you saw and heard or only certain things? Answer: Everything relating to the activities of the Communist Party. Question: No matter what it was so long as it related to the activities of the Communist Party, is that right? Answer: That is right. Question: So that if you went to a meeting of the Communist Party your instructions called for you to write down in your report everything that you saw and heard, is that right? Answer: Everything that I remembered I saw and heard."

Mr. Williams:

Your Honor, I submit that does not tend to dispute the witness' testimony from the witness stand. I submit that it is identical and, therefore, has no proper place in this record as being impeachment testimony because it does not contradict.

The Court:

Objection overruled.

Q. Now, you were told not to select certain things and leave out certain other things, isn't that right?

A. I was told just one thing—

Q. Mr. Witness, will you answer that question "yes" or "no"? You were told not to select certain things and leave out certain other things, isn't that right?

A. I can't answer that question "yes" or "no". No, I was not told that.

Q. You were told to give your recollection as completely as you could, isn't that right?

A. They wanted—the way you framed it, no.

Q. I ask you if you gave this testimony before the Court under oath in the Flynn case: "Question: Yes, and you were told not to select certain things and leave out certain other things, is that right? Answer: That is right. Question: But give your recollection as completely as you could, is that right? Answer: That is correct." Did you give that testimony?

A. Yes.

Q. And that testimony was accurate and true when you gave it, wasn't it?

A. That is correct.

Q. Now, did you give the F. B. I. a report in writing on the things that you saw and heard at the San Cristo-

bal Valley Ranch in the months of July and August, 1950?

A. I gave them written and oral reports.

The Court:

I take it you will be a little while longer, Mr. McTernan?

Mr. McTernan:

Yes, Your Honor.

The Court:

I think we better take our noon recess at this time.

Mr. McTernan:

Will you instruct the witness to communicate with no one concerning this case?

The Court:

(To witness). You are instructed not to discuss your testimony in this case with anyone except the attorneys on either side.

Mr. McTernan:

I am asking that he be instructed to communicate with no one, Your Honor, during the period of cross-examination.

Mr. Herring:

We have no objection to that, Your Honor.

The Court:

All right, Mr. Witness, you will not discuss your testimony or your knowledge of the facts of this case with

any person during the noon recess. You will be back on the stand at two o'clock.

Mr. McTernan:
Or to suffer anybody else to discuss it or mention the case to you in your presence or hearing.

The Court:
Yes.

The Witness:
All right, sir.

Whereupon, at twelve o'clock noon, on January 15, 1954, a recess was taken until two o'clock P. M. the same day, at which time proceedings were resumed as follows:

(The witness Matusow resumed his seat on the witness stand).

On Cross-Examination (Cont'd).

Questions by Mr. McTernan:

Q. Now, when did you arrive at this San Cristobal Valley Ranch?

A. In July, 1950.

Q. When in July?

A. It was right after the middle of the month.

Q. And did you register as a guest there?

A. I did.

Q. And how long did you stay?

A. As a guest, a bit longer than a week; about eight days, I think; ten, maybe.

Q. And approximately how many guests were there at the ranch at that time?

A. Oh, I would say about thirty.

Q. And was there some turnover of guests while you were there?

A. Some, yes.

Q. Some left and others came?

A. That is correct.

Q. And after you left where did you go?

A. I moved into town. Taos, that is.

Q. And about how far away is that?

A. About fifteen or seventeen miles.

Q. And when you got out there to New Mexico you reported to some representative of the F. B. I., didn't you?

A. After I arrived, yes.

Q. When did you do that?

A. I don't recall the exact date of making the first contact.

Q. Approximately when?

A. Oh, within the first week or ten days after I got to New Mexico; or to the ranch, that is.

Q. While you were still a guest at the ranch?

A. I don't believe so. I believe it was a day or so after I moved into town.

Q. And did the F. B. I. Agent ask you to submit information to him on what you had seen and heard at the San Cristobal Valley Ranch?

A. Well, he received reports, yes, he asked me for reports.

Q. And you gave him reports, didn't you?

A. Both written and oral, yes.

Q. I am talking now about the period that you were a guest at the ranch and before you reported to the F. B. I. Agent, did you give him a written report from what you had seen and heard at the ranch during that period?

A. I don't recall if that was a written report or an oral report.

Q. Now, you testified about the occurrence of that ranch before, haven't you?

A. Yes, sir, I have.

Q. Once before the un-American Activities Committee in February, 1952?

A. I touched on it, yes.

Q. And once before the McCarran Sub-Committee in Salt Lake City in October of 1952, isn't that right?

A. October 8, that is correct.

Q. On neither of those occasions did you make any reference to the conversation with Marcus while you were unloading that station wagon, did you?

A. No, I did not.

Q. Did you give a written report to the F. B. I. on that conversation?

A. As I stated, I don't recall if it was written or oral.

Q. Now, you didn't testify before either the un-American Activities Committee or the McCarran Committee on this second conversation with Jencks either, did you?

The Witness:
(To Court). I can answer but qualify it.

The Court:
All right.

A. The answer is "no".

Mr. McTernan:
I don't think he has to give an explanation.

The Court:
You don't have to.

The Witness:
All right, no.

Q. Did you give a written report on that conversation to the F. B. I.?

A. I don't recall if it was written or oral.

Q. This conversation about ANMA with Jencks, you didn't testify to that before the un-American Activities Committee or the McCarran Committee, did you?

A. No, I did not.

Q. Did you give a written report on that conversation to the F. B. I.?

A. I don't recall if it was written or oral.

Q. Well, you do recall that you gave written reports to the F. B. I. on what you saw and heard at the ranch, don't you?

A. Some written, some oral, that is correct.

Mr. McTernan:
Your Honor, we have a motion to address to the Court, and I think it would be preferable if it were made in the absence of the jury.

The Court:
All right. Let the jury retire out in the hallway.

(The jury then retired from the Courtroom).

Mr. McTernan:
If the Court please, at this time we move you for an order requiring the prosecution to produce in Court the reports submitted to the F. B. I. by this witness concerning matters which he saw or heard at the San Cristobal Valley Ranch during the period that he was a guest there, during the period covered by his direct testimony.

We ask that in doing this the following procedure be adopted: That the Court require that the reports be produced and handed to the Court for inspection. We desire those portions of the report which will contradict the witness' testimony. In view of the disparities in his testimony so far, I submit that there is a good ground for making this examination. We ask that those portions of the reports, which in the Court's view after reading them have an evidentiary value in this case for impeachment, be made available to us for cross-examination.

I may say to Your Honor that this is a procedure which has been recognized in the cases for many years now and which has been employed, as Your Honor probably gathered from some of the testimony this morning, in the case of the United States against Flynn, in the Southern District of New York last year or year before last. If there are problems about the law, Your Honor, we will be very happy to present to you the law on the case. Perhaps the leading case on the matter is the "United States v. Krulewitch, 145 F. 2d." I wonder if the Marshal would be good enough to bring that book? (Marshal leaves room.) I would like to refer to certain language of the Court. This is a case in which a man was on trial for violation of the Mann Act, and one of the witnesses against him—indeed, the chief witness against him—was one of the women that had been involved in the transactions charged in the indictment. The witnesses gave damaging testimony against the defendant. It developed that she had given a statement to the F. B. I. which was at variance with her testimony. Now, the defense there demanded the production of the report so that they could inspect it for purposes of using it for impeachment, and it was denied. (Marshal returns and hands book to counsel.) Thank you. The Court held that the denial of the report, the denial of the production

of the statement, was reversible error, and the conviction was set aside on that as well as certain other grounds. Now, the Court, in making the ruling that it made, Your Honor, drew distinctions which are important here in order to understand the nature of our demand. I want it clear that we are certainly not now demanding a pretrial inspection of Government documents. We are not seeking an opportunity to rummage in the Government's files. We are not concerned with the work product of Government counsel or any of their assistants. What we are concerned with is obtaining written declarations of this witness which are inconsistent with his testimony; and we assert to the Court, on the basis of the Krulewitch case and other cases, that we have a right to obtain the witness' prior statements in order to show inconsistencies, if they exist; and a denial of this right to look at the statements would be in this case reversible error. We recognize that a certain conditional privilege attaches to these records in the possession of the Government. It is a privilege which is lost when the Government sees fit to initiate a prosecution and to adduce facts which are connected with the subject matter of the reports; and with this background, Your Honor, I would like, wih your indulgence, to read a portion of Judge Hand's opinion in the Krulewitch case which spells out our position: "It is one thing", says Judge Hand, "to say that an accused shall in advance of trial have inspection of statements of witnesses taken by the prosecution in preparation of its case; it is another to deny him the benefit of so much of such statements as is shown to be inconsistent with the witnesses' testimony on the stand, and would impeach them. If such evidence is to be suppressed after its relevance has been established, it must be because the circumstances of its origin make it a privileged communication. There is indeed authority for say-

ing that a statement made in confidence to a prosecuting officer disclosing a crime is so privileged. We may also assume arguendo that the doctrine extends to statements made to an investigating officer. Indeed, for reasons which will appear, we could in the case at bar even assume (although certainly that is doubtful) that a statement procured by such an officer, which—like the statement here in question—declares that no crime has been committed, is also privileged. This is true because in any event it must be a condition upon the continuance of any such privilege that the prosecution—its possessor—shall not adduce testimony touching the subject matter communicated. Indeed, that is a general principle as to all privileged communications. When their possessor chooses to bring into the light the transaction to which the communications relate, he may no longer suppress the communications themselves. The justification for the privilege lies not in the fact of communication, but in the interest of the persons concerned that the subject matter should not become public. The Court of Appeals of the District of Columbia does indeed appear to have decided otherwise in Arnstein v. United States, but the point that the prosecution had surrendered its privilege by calling the witness, does not appear to have been brought to the Court's attention; and in addition the accused had in any event failed to lay the proper foundation for using the statement. We hold therefore that the statement was competent to contradict the testimony of Joyce; and, except for what we shall say in a moment, if the accused had offered it in evidence; the error of excluding so much of it as contradicted her testimony—a matter to be determined by the judge—would have been apparent. That the accused did not do; on the contrary, he continued to demand an inspection of it"—which we ask here, Your Honor—"which was a different,

matter. It would have been proper to refuse that demand except for the fact that the statement was not competent until Joyce had been questioned as to whether she had not said what it purported to declare, and had been given an opportunity to admit that she had." Citing cases. And here is the point: "But since the accused could not ask her these necessary questions in preparation for admission of the statement, it was proper for him to demand an inspection, and the refusal was erroneous."

Now, Your Honor, if we had the documents we would be in a position to ask the witness whether he hadn't said something in that report which was contradictory of what he said here, and if he denied it we could then offer the document or an excerpt from the document, but we can't do that, and it would be improper for us to do because, as Judge Hand pointed out, we don't have the document to look at and we can't properly ask a witness a thing like this before a jury unless we have a basis for that question. But if there is something contradictory in those reports, then we are entitled to use it as a part of the search for the truth, and in order to avoid the situation where we would be rummaging through Government files. We have pointed specifically to the reports we have in mind and we ask that they be produced, not for us to look at, because that would be improper before the evidentiary value of the statements had been established, but we ask that they be produced for you to look at so you can determine whether or not they have evidentiary value. If they do not, then you don't turn them over to us. If they do, then you turn over that portion that has evidentinary value.

It is, Your Honor, beyond question, from what all the cases have held, that we have made the showing that is necessary; namely, that the witness has made written statements, that they deal with the subject matter, that

we are therefore entitled to a determination as to whether or not they have such evidentiary value as to permit us to impeach him with them, just as we are entitled to impeach him with any other matters not in possession of the Government. The only real problem here is how to handle the Governmental privilege and it is handled, as the other cases I am about to cite to you show, by this technique of having the Court look at the documents first. The cases are numerous on this, Your Honor. I simply cite a few. "United States v. Andolschek, 143 F. 2d 503", where the Court pointed out at considerable length that the Government faces an alternative in bringing a prosecution, an alternative which involves this Governmental privilege. The Government may insist upon its privilege and not bring the prosecution, or, if it brings the prosecution it must stand ready to bring to light all which aids in the search for the truth.

Incidentally, Your Honor, the cases are not confined to any particular use of the Governmental document. It has to do with any evidentiary use, whether for purposes of impeachment, as in the Krulewitch case, or, as in the Andolschek case, Governmental reports which were designed to show that the defendants had, contrary to the accusations against them, conducted themselves in a lawful and faithful manner.

Another case, "The United States v. Beekman, 155 F. 2d 580", a Second Circuit Case, where the defendant sought to have produced OPA Ration Board records in order to show that certain witnesses used by the Government in a prosecution against him had been disciplined by the OPA and therefore had an interest or a bias or were subject to control and influence by the Government. Another case is "The United States v. Grayson, 166 F. 2d 863", another Second Circuit case. The cases are so numerous that it is not necessary to cite them all,

Your Honor, but I submit that they all support our position and, therefore, the request which we make to you should be granted.

The Court:

What does the Government say?

Mr. Williams:

Your Honor, the Krulewitch case, to which they refer, is so entirely different in facts to this case that it isn't authority at all, in my opinion. There the witness admitted on the witness stand that she had given a statement to the F. B. I. that was entirely contradictory of what she had testified to on the stand, and after Judge Hand used the language to which counsel refers, he went further; on Page 79 of that opinion he made it clear that the inspection should only have been permitted because of the exculpatory nature of the statement and the inconsistency of the testimony. I submit here that this witness has not varied one particle from any of those other statements he has made and the statements he is making on the witness stand now. At the best, they are playing on the words "complete report", and he says he used that word as meaning a "comprehensive" report; and, of course, no man in making a report could give every detail that could have been brought out from him on a witness stand on cross-examination. Judge Hutcheson has just recently ruled in the Shelton case that the Government was not required to furnish such reports. That is "Shelton v. United States, 205 F. 2d 806."

The Court:

The Court is familiar with that case.

Mr. Williams:

There he followed the Supreme Court, which uses this language and this is a quote from it: "We think it the better rule that where a witness does not use his notes or memoranda in Court a party has no absolute right to have them produced for inspection." Now, that is the situation here, and that is the Supreme Court saying they have no right to them. Certainly it is within the discretion of the Court, and I ask you to overrule the motion so we may proceed.

Mr. McTernan:

Well, Your Honor, there are many possible bases on which access to reports may be asked; one of which may be for use in connection with refreshing recollection. That isn't the basis upon which we put it, and it is not the basis upon which the Court took the action that it did in the Krulewitch case and the other cases I have cited to you. The cases which we rely on, Your Honor, are cases saying that where the witness has made a prior statement, access to that statement is proper for purposes of impeachment. Let us look at it this way, Your Honor. If we knew that this witness had written a memorandum of his visit to the San Cristobal Valley Ranch and had left it with a private citizen—a friend of his, let us say—we would be entitled, for the purposes of this proceeding, to subpoena that statement and have it produced here for purposes of impeachment. Now, the problem that arises for you is that the written statement in this instance is not in the possession of a private party. It is in the possession of the Government and the Government has asserted, as it always asserts, that these are privileged documents and they don't have to release them; and the cases hold that where the document in the possession of the Government has evidentiary value the

conditional privilege no longer attaches in view of the fact that the Government has brought the prosecution and opened up this subject, and that the Government must forego its privilege on that account. Let me point out the language of the Second Circuit in the Androleschek case, "142 F. 2d 503". It says, speaking of these Governmental regulations that attach to a privileged document. It says: "It is true that in." —and it cites several cases—"the validity of a similar regulation was upheld. However, none of these cases involved the prosecution of a crime consisting of the very matters recorded in the suppressed document. . .", and that is exactly what we have here. "The very matters recorded in the suppressed document, or of matters nearly enough akin to make relevant the matters recorded. That appears to us to be a critical distinction. While we must accept it as lawful for a department of the government to suppress documents, even when they will help determine controversies between third persons, we cannot agree that this should include their suppression in a criminal prosecution, founded upon those very dealings to which the documents relate, and whose criminality they will, or may, tend to exculpate. So far as they directly touch the criminal dealings, the prosecution necessarily ends any confidential character the documents may possess; it must be conducted in the open, and will lay bare their subject matter. The government must choose; either it must leave the transactions in the obscurity from which a trial will draw them, or it must expose them fully."

Now, Your Honor, there is no way of getting around that language; and there is no case which disapproves of that language; and there is no case which says the governmental privilege will stand in the way of the production of these documents for purposes of impeachment, and counsel can cite you no cases. The case he

cites you is something else again, dealing with possible access to something that the witness has used to refresh her recollection. But for the purposes of impeachment, on reports or writings which deal with the very subject matter of prosecution, Your Honor, we are entitled to them as a matter of law, and the only step in between the possession by the government and our access to them is your saying yourself as a judicial matter that the documents have evidentiary value for this case; and evidentiary value, we assert, is impeachment.

The Court:
The motion is overruled.

Mr. McTernan:
We ask for the purposes of protecting our record that the Government turn over to you these reports, and that they be sealed, for purposes of the record here on appeal, so that the matter may be subject to proper review by the appellate Court, and this, Your Honor, is the procedure which the cases say must be followed so as to protect the interests of the defendant.

The Court:
Motion and request is overruled and denied. (To Marshal): Bring back the jury, please.

(The jury returned to the Courtroom and resumed their seats in the jury box).

On Cross-Examination (Resumed).

Questions by Mr. McTernan (Cont'd):

Q. Now, you said this morning that you were not in New York during the period up to and including the general election in 1952?

A. No, I don't believe I said that.

Q. Is that correct or isn't it?

A. No, it is not correct.

Q. Were you in New York on election day, 1952?

A. I believe I arrived in New York on election day, about ten or eleven in the morning.

Q. That was around the 2nd of November, 1952?

A. I believe that's the day I returned to New York, yes.

Q. And you voted in that election, didn't you?

A. I did.

Q. And when you went in to vote you wrote down your address, your residence, on the election roll, didn't you?

A. I stated this morning I don't recall if I voted with absentee ballot or in the election precinct.

Q. Do you recall now?

A. I recall registering for an absentee ballot but don't recall if I went to the precinct or not. It is possible that I did.

Q. Well, before Election Day in 1952, for the period of a couple of months before then, where were you?

A. Well, I went to New York, I believe in late May or early June, of 1952.

Q. I said in the two or three months before that?

A. In 1952, I was in the west, in Montana, Utah, State of Washington, Nevada, and Wisconsin.

Q. Campaigning?

A. That is right.

Q. For Senator McCarthy?

A. Among others. yes.

Q. And other Republican candidates for office?

A. That is correct.

Q. You were an active member of the Republican Party at that time?

A. Not as such, no.

Q. Well, did you classify yourself as a Republican?

A. In voting, yes.

Q. As a matter of fact, your description of yourself is a Republican and proud of it, is that right?

A. I believe that was my description on May 6, 1953, in reply to Senator Jackson.

Q. And this in connection with your activities, among others, of campaigning for Senator McCarthy, is that right?

A. No, that answer was in reply—

Q. Well, wasn't it in connection with questions dealing with your activities on behalf of Senator McCarthy?

A. No, it was not. It was in connection with my campaign against Senator Jackson, who asked me the question.

Q. Now, you used the name "Hurley Matt" in connection with a newspaper article that appeared in the Santa Fe newspaper, didn't you, in 1950?

A. That is correct.

Q. And this was an article which you submitted to the newspaper?

A. I did.

Q. And you received money for that article, didn't you?

A. I never received the money, no.

Q. Well, did you get a check for the money?

Mr. Williams:

Just a minute. I object to this as being hopelessly immaterial. It does impeach a witness. It does not go to his credibility, whether he got money for writing an article or didn't get it, or whether he is a Republican or a Democrat.

Mr. McTernan:

I can assure Your Honor, as counsel well knows, this leads to proper impeachment.

The Court:

Counsel offers it with that assurance.

Mr. Williams:

I am pretty familiar with that and I don't think it does, in my opinion.

The Court:

With the assurance of counsel that he is laying the predicate for impeachment the objection is overruled.

A. I have lost the question.

Q. Didn't you receive a check made payable to Harvey Matt for having submitted that article to the "Santa Fe New Mexican"?

A. I have to qualify that.

The Court:

Answer it first.

A. The answer is no, I have not. A check was mailed to me, one that I never received.

Q. And the article which you submitted to the newspaper was, with the exception of a few paragraphs, plagiarized from an article in "Political Affairs"?

Mr. Williams:
Now, Your Honor, this is immaterial.

The Court:
Objection overruled.

A. Again I will have to qualify that.

The Court:
Answer it first and then qualify it.

A. The answer is yes, an article that appeared in the April, 1948 issue of "Policital Affairs." The article was placed in the "Santa Fe New Mexican" in answer to a letter of Judge Chavez who had just returned from Puerto Rico, and—

Mr. McTernan:
I don't think this is necessary.

The Court:
I don't think it is necessary to go into detail.

Mr. Williams:
Let me say one more thing. If they just produce a cold fact here without any explanation it is going to look like he took money while not entitled to it but if you allow him to explain it I think he can do so. We—

Mr. McTernan:
I think I am entitled to—

Mr. Williams:
May I finish, Mr. Counsel? We insist that if they prove a cold fact here then he's got a right to prove his side of it, or give it.

The Court:

The Court will give him reasonable opportunity without going into detail. You still have a right to examine him on re-direct.

Mr. Williams:

Would we have a right to call all those people who dealt in that matter and find out who was right and who was wrong?

The Court:

The Court will permit him to answer the question and then make a reasonable explanation. It is not necessary to go into detail.

(At this point two instruments were marked "D-26" and "D-26A").

Q. I show you Defendant's Exhibit 26 and 26-A for identification. Do you recognize that as a photostatic copy of this article that appeared in the "Santa Fe New Mexican" under the name of "Harvey Matt"?

A. Yes.

Q. And is it your testimony that you received no money for that article?

A. I did not receive the check, no.

Q. Did you indorse the check?

A. No.

(An instrument was marked "D-27").

Q. I show you Defendant's Exhibit 27-for-identification, and ask you if on the reverse of that check the name "Harvey Matt" is not written thereon by your hand?

A. It is not.
Q. Is that your signature? (Indicating.)
A. Looks like it but it is not.

(Another instrument was marked "D-28").

Q. I show you Defendant's Exhibit 28-for-identification and ask you whether the handwriting "Harvey M. Matusow" which appears on the far right column of that sheet of paper are your signatures?
A. They are.

Mr. McTernan:
On the basis—excuse me, counsel, I didn't mean to—(shows exhibits to Mr. Williams).

Mr. Williams:
I don't want them.

Mr. McTernan:
On the basis of the exemplars, Your Honor, which are identified as Defendant's exhibit 28-for-identification, we offer Defendant's Exhibit 28 and Defendant's Exhibit 27 in evidence.

Mr. Williams:
I object to 27. The witness testified it is not his signature. There is no testimony that it is, and this is what I have been trying to avoid. There is another lawsuit there. It will take three days to thrash out the question of whether that is his signature or not. I object to the admission of Exhibit 27 because it is immaterial and irrelevant and the witness has said it is not his signature.

677

EXHIBIT
U. S. Dist. Court
S. D. of N. Y.
AUG 4 1952
GOVERNMENT

4: 100—

-20-6248

EMPLOYEES WAGE RECORD, 19

NAME Harvey Marshall Matusow
Address 1491 Mt Road

Dependents | Total Exemptions 1

Date | Wk. | Day | Hour | Vac. Wk. | Day
Date | Wk. | Day | Hour | Vac. Wk. | Day
Date | Wk. | Day | Hour | Vac. Wk. | Day
Date | Wk. | Day | Hour | Vac. Wk. | Day

FIRST QUARTER

Week ending	WAGES	Soc. Sec.	Income Tax		NET WAGES		Signature
TOTAL							

SECOND QUARTER

Week ending	WAGES	Soc. Sec.	Income Tax		NET WAGES		Signature
TOTAL							

THIRD QUARTER

Week ending	WAGES	Soc. Sec.	Income Tax		NET WAGES		Signature
7/1	40 00		4 10		35 90		
7/8	40 00		4 10		35 90		
TOTAL							

FOURTH QUARTER

Week ending	WAGES	Soc. Sec.	Income Tax		NET WAGES		Signature
10/7	40 00		4 10		35 90		Harvey M Matusow
10/14	40 00		4 10		35 90		Harvey M Matusow
TOTAL							

THIRD QUARTER

Week ending	WAGES	Soc. Sec.	Income Tax		NET WAGES		Signature
7/1	40 00		4 10		35 90		
7/8	40 00		4 10		35 90		
7/15	40 00		4 10		35 90		
7/22	40 00		4 10		35 90		
7/29	40 00		4 10		35 90		
8/5	40 00		4 10		35 90		
8/12	40 00		4 10		35 90		
8/19	40 00		4 10		35 90		
8/26	40 00		4 10		35 90		
9/2	40 00		4 10		35 90		
9/9	40 00		4 10		35 90		
9/16	80 00		8 20		71 80		
9/23	40 00		4 10		35 90		Harvey M Matusow
9/30	40 00		4 10		35 90		Harvey M Matusow
	600.00		61.50		538.50		

FOURTH QUARTER

Week ending	WAGES	Soc. Sec.	Income Tax		NET WAGES		Signature
10/7	40 00		4 10		35 90		Harvey M Matusow
10/14	40 00		4 10		35 90		Harvey M Matusow
10/21	40 00		4 10		35 90		Harvey M Matusow
10/28	40 00		4 10		35 90		Harvey M Matusow
11/4	40 00		4 10		35 90		Harvey M Matusow
11/11	40 00		4 10		35 90		Harvey M Matusow
TOTAL	240 00		24 60		215 40		

D-28

Period			Wages	Soc. Sec.	Income Tax		Net Wages
1st Quarter							
2nd Quarter							
3rd Quarter			600 00		61 50		538 50
4th Quarter			240 00		24 60		215 40
Year Total			840 00		86 10		753 90

Comp 9/9 rec [illegible]

The Court:
But it purports to be.

Mr. Williams:
Until they can produce evidence that that is his signature I object to its admission.

The Court:
Objection overruled. It all goes to his credibility.

Mr. Williams:
Who is going to say that this is his signature?

The Court:
I don't know. I am not producing the evidence.

Mr. McTernan:
As I understand the law, where a questioned signature is in issue, and there is offered unquestioned signatures which are closely similar in nature in handwriting, the exemplars so produced provide a basis for the introduction of the questioned signature.

The Court:
The Court has ruled. He has overruled the objection.

Mr. McTernan:
I was simply trying to explain my position. Does Your Honor care to look at the documents?

(Same were passed to the Court).

The Court:
(To Witness). The check in question is for twelve dollars, dated December 11, 1950, payable to Harvey Matt,

and the name on the back is signed "Harvey Matt." Did you say that is not your signature?

The Witness:

That is right. May I explain that? Somebody else signed it, and—

Mr. McTernan:

I move to strike that statement.

The Court:

The Court will sustain the motion but give the prosecution an opportunity to examine him later. The jury will disregard that last answer for the present.

(DEFENDANT'S EXHIBITS 27 and 28 were thereupon received in evidence, and a photostatic copy of each of these exhibits appears on the following two pages).

"D-27"

By Endorsement This Check When Paid Is Accepted in Full Payment of the Following

DATE		AMOUNT
Correspondent for November		

THE NEW MEXICAN, INC.

PUBLISHERS OF THE SANTA FE NEW MEXICAN

Nº 4004

Santa Fe, New Mexico Dec 11 1950

PAY TO THE ORDER OF Harvey Matt $12 00

Bonded ***12 DOLS 00 CTS DOLLARS

The New Mexican, Inc.

To SANTA FE NATIONAL BANK
SANTA FE, NEW MEXICO

Anna K. Ormsbee D-27

676

FILED
JAN 21 1954
MARY FORT, CLERK
BY Pauline G. Rivera
DEPUTY

PAY TO THE ORDER OF
ANY BANK OR BANKER
SANTA FE NATIONAL BANK
SANTA FE, NEW MEXICO

Pay Tax Att.

Questions by Mr. McTernan (Cont'd):

Q. Directing your attention to this conversation about "do-day". You never did mention anything about "do-day" in any of your other testimony about your conversation with Jencks, did you?

A. I don't know if I did or didn't.

Q. You want to look at the testimony in Salt Lake City in October of '52 to refresh your recollection?

(Shows same to witness.)

The Court:

Well, we won't take time to go through all of that.

Mr. McTernan:

Just a few pages.

Mr. Williams:

I suggest that the witness dont' have to look unless he cares to look.

The Court:

We are not going to take time for him to go through a long printed record.

Mr. Williams:

He has answered. If they want to impeach him let them do so.

The Court:

Well, all right, we will proceed. He stated he didn't remember.

Q. Look at your testimony beginning on Page 150. Does it help you to refresh your memory that you did

not say anything about "do-day" in that testimony about your conversation with Mr. Jencks?

(Witness examines transcript).

The Court:
Are you ready to answer, Mr. Witness?

The Witness:
Yes, sir.

A. I don't seem to find anything about "do-day" in this testimony.

Q. Did you put anything in your written reports to the F. B. I. about "do-day"?

A. I don't recall what I put in my reports two or three years ago, written or oral, I don't know what they were.

Q. Your written reports to the F. B. I. were prepared a short time after the events that they described, isn't that right?

A. Yes.

Q. And represented your fresher recollection as to the matters that are referred to in this report, isn't that right?

A. Yes.

Q. In other words, your memory on the things in the reports was much fresher at the time you wrote them than they are when you testify here today, isn't that right?

A. Referring to what, specifically?

Q. Anything you testified to on direct?

A. I wouldn't say so, no.

Q. Have you read those reports before testifying here?

A. I have not.

Q. Have you read any summary of those reports?

A. No, sir.

Q. Or anything that purports to contain any of the things that are set out in the reports?

A. I have not, sir.

Q. Did you say that Jencks stated that he or any group with which he was connected was engaged in a strike at the time he talked to you up there at the ranch?

A. No, he did not say they were engaged in a strike that I recall.

Q. As a matter of fact, he didn't say anything to you about strikes, did he?

A. Yes, he did.

Q. Did he refer at that time to any strike in Silver City or Bayard, New Mexico?

A. I don't recall at the time whether he did or didn't.

Q. You know whether you reported that to the F. B. I., I mean repored to the F. B. I. whether he did or did not?

A. Well, if he hadn't I couldn't have reported something he hadn't.

Q. You said you didn't remember. What I want to know is whether you reported anything to the F. B. I. with reference to Jencks' conversation about a strike?

A. I don't recall the conversation about a strike at this time.

Q. Are you now or have you been on the payroll of the United States Government?

A. I have been.

Q. When?

A. 1944 and '45 and '46, when I was in the Army. 1951, when I was in the Air Force.

Q. Since you got out of the Army and Air Force, have you been on their payroll?

A. I received pay from the United States Government, yes.

Q. Well, you have been regularly employed by the United States Government since you got out of the Air Force?

A. No, irregularly.

Q. In connection with services you performed for the United States Government?

A. That is correct.

Q. Did you get paid by the United States Government during the period that you were supplying information to the F. B. I. while you were still in the Communist Party?

A. That is correct, sir.

Q. How much did you receive from them then?

A. Might I refer to—(takes paper from his pocket).

Q. I don't know what you are referring to.

The Court:

Yes.

A. It is a document that you and the attorneys in the Flynn case signed giving the exact figures of the money I received.

Q. All right.

A. In 1950, covering the period of my reporting to the F. B. I., I received a total of $325.00, from February until December.

Q. In connection with the various appearances you have made you have also received money, have you not?

A. Yes, sir.

Q. You appeared before the Subversive Activities Control Board?

A. I have.

Q. And you received a fee in that connection?

A. I have, sir.

Q. At the rate of twenty-five dollars a day?

A. That is right, sir.

Q. And for how many days?

A. May I refer to this again? (Referring to paper)

Q. I don't know if you will find it there.

A. It is here, sir. In 1952, seven days before the Subversive Activities Control Board. I received $175.00 in witness fees, $64.00 in transportation and per diem; and this year, I don't have the figures such as these, but I believe it covers about ten or twelve days at twenty-five dollars a day, plus nine dollars a day regular witness fee and regular transportation.

Q. You also received fees in connection with or for your appearance before these various Congressional committees?

A. Regular witness fees, that is right.

Q. Now, the fee you got for appearing before the Subversive Activities Control Board is an "expert witness" fee?

A. That is correct.

Q. And the fee you got in the Flynn case is an "expert witness" fee?

A. No, sir.

Q. Have you received expert witness fees for any of your appearances before the Congressional committees?

A. No, sir.

Q. None of them?

A. None of them.

Q. Have you received any money for any publications or writings that you prepared in connection with what you claimed to know about the Communist Party?

A. I have sir.

Q. They include a series of articles in the New York newspapers?

Mr. Williams:

Just a minute. Your Honor, I thought he was questioning him about what he received from the Government. I don't see that it is material how he makes a living.

Mr. McTernan:

I think that if he makes a living as a professional anti-Communist we are entitled to show it.

Mr. Williams:

I withdraw the objection, if the Court wants to hear it.

The Court:

All right, the objection is withdrawn. You may answer if you received money from some of your writings.

A. I sold an article in February of 1953 to the Hearst Newspapers, which appeared in the New York Journal American, and I received two hundred and fifty dollars plus expenses incurred going to and from Dayton, Ohio to New York to prepare the article.

Q. Have you received any other money for any writings of yours?

A. Yes, sir, three hundred dollars for an article that appeared in the October issue of the American Legion Magazine in October, 1952.

Q. Dealing generally with the subject of what you claimed to know about the Communist Party?

A. In part.

Q. Anything else for any writings?

A. On the subject of Communism?

Q. Yes?

A. Yes: In 1952, in June and July, and part of August, I was Associate Editor of a publication called "Counter-Attack"; at which time I did some writing and some research.

Q. And you received a salary for that, did you?

A. I did.

Q. How much did you receive?

A. I believe it was either seventy or seventy-five dollars a week.

Q. That is "Counter-Attack"?

A. That is right.

Q. This is the publication, is it not, that made a specialty of exposing writers and actors on radio and television?

A. I wouldn't limit it to that, sir.

Q. But it did include that, didn't it?

A. I don't follow your term, "exposing writers and actors", what it means.

Q. Well, there was a considerable amount of discussion in New York about writers and actors losing their jobs because of their names appearing in "Counter-Attack", isn't that right?

A. Well—

Mr. Williams:

How can this possibly be a matter of impeachment?

The Court:

If he is connected with that paper or that was his paper, the objection is overruled.

A. No, I will not state that the purpose of "Counter-Attack" was to see that people lost their jobs.

Q. The purpose of "Counter-Attack", among other things, was to name as many people as they could whom

they claimed had Communist connections, isn't that right?

A. No, it was not the purpose.

Q. Wasn't it one of the purposes?

A. It was one of the results of "Counter-Attack" but not the purpose.

Q. And one of the activities of "Counter-Attack" was to list the names of radio and television writers and actors with the result that they lost their jobs, isn't that right?

A. Not because of "Counter-Attack."

Q. Just because they were mentioned in "Counter-Attack", isn't that right?

A. No, sir.

Q. It happened after it was mentioned in Counter-Attack"?

A. No, it usually happened when they invoked the Fifth Amendment somewhere.

Q. It usually happened after they were named in "Counter-Attack"?

A. No, sir.

Q. You say that was not right?

A. No, and I can cite you some cases to prove your point wrong.

Q. Now, besides your employment by "Counter-Attack" in 1952, you were also employed by an outfit called "The Ohio un-American Activities Committee", were you not?

A. Not an "outfit", a legislative committee of the Ohio Legislature.

Q. And you received a salary for that?

A. I did.

Q. And this also involved work against people accused of being Communists, isnt' that right?

A. It involved investigating Communism for the Ohio State Legislature, yes.

Q. Your answer to my question is "yes", with that explanation?

A. That is correct.

Q. And you received seventy or seventy-five dollars a week for that, didn't you?

A. Approximately, that is right.

Q. And how many weeks did you work for them?

A. I believe I started working on the 15th of January and worked to approximately the 1st of April. It might have been the 1st of May. I am not too sure on the exact date.

Q. Now, you received other income for anti-Communistic activities in the year 1952, didn't you, besides the ones you have already mentioned?

A. Well, the twelve dollars you paid me in the trial in New York, and for anti-Communist activities and such I don't recall. There might have been, but I can't think of it now.

Q. Well, you were employed by the Republican Party as an anti-Communist specialist, weren't you?

A. I was not employed as such.

Q. Well, did you receive compensation for activities on behalf of Republican Candidates in the year 1952?

Mr. Williams:

Your Honor, is being a Republican an impeachment matter?

The Court:

No. It is a question of whether or not he was engaged in these activities.

Mr. Williams:

He is asking if the Republican Party paid him. I submit, for the sake of time, it cannot bear on impeachment matters.

Mr. McTernan:

I think, Your Honor, if it goes to what was generally called anti-Communist activities and he is making a profession of it, it is proper.

The Court:

I don't think it is against the law if he is a Republican or a Democrat. The question is did he engage in anti-Communist activities.

Mr. McTernan:

I didn't want to make a compound question. That is why I broke it down.

The Court:

All right.

Q. Now, didn't you receive money from the Republican National Committee to campaign on behalf of the Republican candidates?

A. I was not paid by the National Committee.

Q. Well, you were paid by some organization?

A. That is right.

Q. What was the name of it?

A. In Wisconsin I was paid by the McCarthy Club, an independent organization to help re-elect Senator McCarthy. In the State of Utah I was paid by—well, in Utah I was paid by the Republican Party. In Montana I was paid by the Montana Citizens for Americanism. In the State of Washington, I don't recall offhand

who paid me; and in Ohio, when I spoke I didn't receive any pay; and when I spoke in New York I received no pay.

Q. Isn't it a fact that the total pay you did receive in these respects was approximately ten thousand dollars?

A. It is not a fact.

Q. How much was it?

A. It will take me a few minutes to give you a breakdown. May I have a pencil and paper.

(The witness was handed a pencil and some paper.)

Mr. Williams:

Your Honor, I don't want to keep butting in, but—

The Court:

The Court don't see the materiality of this.

Mr. Williams:

There must be an end to a man's questioning on a person's private and personal life. These are not matters of impeachment. They are not trying to contradict him anywhere, and impeachment testimony is limited to contradictory matters or conviction in a Court.

Mr. McTernan:

Your Honor, I think that it bears upon a witness' interest and bias.

The Court:

It depends on whether or not it was an anti-Communist activity, not whether he was campaigning for some candidate for office on either the Republican or Democratic, or any other ticket. It is a question that must be lim-

ited to any anti-Communist activity to show his bias, or prejudice, or his interest, or affecting his credibility as a witness. Now, the Court is not going to require him to answer as to whether or not some candidate for office in Wisconsin or state of Washington paid him to campaign just to get this particular man elected to office on this or that ticket. That is invading his private affairs. But if it is anti-Communist, and you can so show, the Court will continue to give you, as he has been giving you, a good deal of latitude. Wherever or whoever he was campaigning for it must be shown that it was in connection with anti-Communist activities.

Mr. McTernan:

I will try to develop that, Your Honor.

Q. Isn't it a fact that in these campaign activities of yours you were mainly engaged in giving speeches on the subject of Communism?

A. On the subject of Communism, yes.

Q. And the general purport of your remarks was anti-Communist, wasn't it, without going into the specific things that you said?

A. Yes.

Q. And for making these anti-Communist speeches you received compensation, didn't you?

A. Well, yes, I received compensation for them.

Q. Now, can you tell us approximately how much, in the year 1952?

A. Excuse me. (Figures on paper)

Q. Give us a round-figure approximation. That would be satisfactory.

A. You want me to include the money paid for transportation and hotel bills?

Q. Can't you separate that from what you got for compensation, from what you got for expenses?

A. It wasn't much. I will give you a figure which I wouldn't want to be binding because I haven't had a chance to check my records as to the exactness of it; but I would say, after hotel bills and transportation expenses, the actual money I came out of the campaign with was about slightly under a thousand dollars; or maybe about that, give or take two or three hundred dollars. A few weeks ago I had the correct figure, or near correct. I don't recall what it was.

Q. Isn't that figure ten thousand dollars?

A. No, sir.

Q. Well, do you recall testifying in Washington before the Subversive Activities Control Board that you made approximately ten thousand dollars from various activities of yours of an anti-Communist nature?

Mr. Williams:

Now, Your Honor, I object to that. They are trying to impeach him on an unimpeachable matter.

The Court:

No. As the Court understands, it goes to his interest, and this Court is trying to confine it strictly to any anti-Communist activity not because he campaigned for somebody for Congress or some other office.

Mr. Williams:

But now, he has testified what he thinks he received and they are now attempting to show that some day he received a different amount. They are trying to impeach him on a collateral issue.

The Court:

Objection is overruled.

A. I can explain that very easily. I answer it yes, I said ten thousand dollars in Washington, but in the year 1952 I travelled almost two hundred thousand miles by air and rail, and a great part of that ten thousand was used in purchasing airline tickets and railroad tickets. Another great part of it was used in the expenses and hotel bills, and food, and various expenses incurred on the road. The figure of approximately a thousand or twelve hundred dollars in connection with these speeches is a figure which deals with the amount of money I netted after the campaign. The figure of ten thousand dollars also includes other money I made during the year 1952 that had nothing to do with politics.

Q. But with anti-Communism?

A. Nothing to do with anti-Communism.

Q. Do you have any arrangement with the United States Government whereby you can draw money from the Federal Treasury for your purposes?

A. I don't quite understand you, sir.

Q. Do you have any arrangements with the United States Government whereby you can draw from its treasury money for your personal purposes?

A. No.

Q. You did succeed in drawing some money from the Federal Government last October, didn't you, in order to get yourself back east from Santa Fe, New Mexico?

A. For a case, yes. Well, it was around September 30th of last year. I believe I left Albuquerque on September 30th or October 1st.

Q. And in order to go from Albuquerque to the east you went to the United States Marshal and got yourself some money in order to make the trip, didn't you?

A. On official government business to go to Washington, that is correct.

Q. And the Marshal informed you he had no authorization to draw money for you for official business, didn't he?

A. I was under subpoena and he needed authorization, and received it.

Q. And you had to make contact with the boys in Washington in order to get the money out of the treasury to go back East, isn't that right?

A. Not as you state it, no, sir.

Q. Well, you did succeed in getting $163.68 from the United States Marshal after he told you he had no authorization to pay it?

The Witness:
Can I explain?

The Court:
Yes.

A. The answer is "yes". I was subpoenaed to appear in Washington for the Internal Security Section of the Justice Department on four cases—not four, it was two cases, pardon me—pending before the Subversive Activities Control Board, one of which I had already testified in. They requested my presence in Washington and told me they would authorize the Marshal to advance travel from Santa Fe, New Mexico, where I was, to Washington, D. C. When I arrived at the Marshal's office in Albuquerque he had not received the authorization. I was obliged, under the circumstances, to place a phone call to Washington and authorization was received because I was subpoenaed and they wanted me in Washington.

Q. And where was that subpoena issued from?

A. From Washington.

Q. And what was the date of it?

A. I don't recall, sir.

Q. And was the subpoena issued by the Attorney General or by a Court of Law?

A. I believe it was an administrative subpoena.

Q. Well, do you know?

A. I am not that familiar with the types of subpoenas.

Q. You saw it, didn't you?

A. Sir, I got about forty subpoenas at various times and I usually don't read them too carefully.

Q. You know whether this subpoena was issued by the District Court of the District of Columbia or by the Attorney General?

A. I will have to check it, sir, I don't know.

Mr. McTernan:

No further questions.

Mr. Williams:

No questions. May this witness be excused? I believe we are through with him. He is anxious to get home.

The Court:

Both sides through with him?

Mr. McTernan:

Your Honor, there are some matters in which we have been attempting to get information and we haven't been able to today, but we expect to have it by Monday. We will appreciate it if this witness could be held here until Monday, until we have had an opportunity to go into these matters.

The Court:

That is up to you. The Court don't want to unduly hold any witness.

Mr. McTernan:

I can't go on.

The Court:

You say you cannot and assure the Court you may want to cross-examine him further on matters that you are not able to cross-examine him about at this time?

Mr. McTernan:

I give the Court that assurance; and I can say that Monday I will probably be ready but I think it is not reasonable to ask you to hold him beyond that.

The Court:

In other words, you don't want to join in excusing him at this time?

Mr. Williams:

I would like to call your attention to this, that this witness is certainly no surprise to them. They have been publishing his name for weeks. He was here for the Grand Jury nearly a a year ago, and they knew it. They should be ready and continue their cross-examination. At least, before we are forced to go ahead.

The Court:

Oh, yes. If they have any further questions, inasmuch as counsel seems to know this witness well and has examined him before, the Court wouldn't defer it longer than the first thing Monday morning.

Mr. Williams:

Are we going to be forced to go forward then?

The Court:

(To witness) You are excused until Monday morning at 9:30.

(Witness excused.)

The Court:

All right, gentlemen of the jury, we are going to adjourn at this time until 9:30 o'clock Monday morning, but the Court wants to again instruct you that during this weekend, and during your absence from the Court, at home and other places, that you are not to discuss this case. Of course, you can't discuss it among yourselves because you won't be together. But you are not to discuss this case with any person, and you are not to suffer any person to discuss it with you, directly or by telephone or to talk about it in your presence. If anybody should even attempt to do so it will be your sworn duty to stop him and also to report it to the Court for appropriate action. As before stated, and as you have discovered, in this Court you are not kept together because you are placed strictly on your honor, so this rule must be strictly observed. The Court also again instructs you that you must not read any newspaper accounts of this case or listen to any radio reports about it, or look at any telecast about the case. The Court admonishes you to keept strictly an open mind about this case and not reach any decision about it until you have heard all the evidence and the argument of counsel, and the charge of the Court. With these instructions, this Court stands adjourned until 9:30 o'clock Monday morning.

• • • • • • • •

A recess was taken at 4:00 o'clock P. M., and upon reconvening at 9:30 o'clock A. M., on Monday, January 18, 1954, proceedings were resumed as follows:

Mr. McTernan:
We would like to examine Mr. Peterson, Your Honor.

JAMES E. PETERSEN, was thereupon recalled to the witness stand, and further testified as follows:

Mr. Herring:
Your Honor, before the cross-examination of Mr. Petersen continues I wonder if the Government could ask him a few questions on direct?

The Court:
Well, if there is no objection by the defense counsel.

Mr. McTernan:
We have no objection, Your Honor.

The Court:
He says he has no objection. He is their witness. The Court will refer to him as their witness.

Mr. Herring:
I understand.

Questions by Mr. Herring:
Q. Mr. Petersen, before cross-examination continues, you told me that you wanted to say something regarding some of your testimony on direct as to a particular meeting or time, is that correct?
A. That is correct.

Mr. McTernan:

Now, Your Honor, we didn't understand what was coming. I thought there was further direct testimony. I object to any testimony now designed to correct the direct in the middle of cross.

Mr. Herring:

He wanted to explain some of his testimony.

The Court:

Well, he is the defense's witness for the present. You can have him on redirect later, if you have anything that is material.

Mr. Herring:

This is material. I understood counsel had no objection.

The Court:

No. Counsel just stated that he assumed and he thought it was further direct, but if the witness does not have an opportunity during the course of the cross-examination to explain any of his previous testimony if asked about it, why, you will be permitted to ask him on redirect and the Court will pass on the admissibility of it at that time.

Mr. Herring:

If they are objecting to it, of course it is all right.

The Court:

You will proceed with cross-examination, Mr. McTernan.

Mr. McTernan:

Thank you, Your Honor.

On Cross-Examination (Continued).

Questions by Mr. McTernan:

Q. Mr. Petersen, I would like to see if we can get your recollection of this Denver meeting, the thing that you called, I think, the "Rocky Mountain Conference of the Communist Party", which you described as having been held either late in '47 or early in '48. Let me get this a little more specific. As I recall your direct testimony, you drove to Denver from Utah in a car with some friends, right?

A. That is right.

Q. It was a two-tone blue Studebaker, as I understood your testimony?

A. That is right.

Q. And your recollection was that you were gone four days, is that right?

A. That is correct.

Q. And am I correct in understanding that you took one day to drive there, you were there two days, and took one day to drive back?

A. On the way back we stopped at a Motel.

Q. Before you got to Salt Lake City?

A. That is right.

Q. Were you out of Salt Lake four days?

A. We may have been out of Salt Lake five days, I don't know.

Q. Well, was it four or five days that you were out of Salt Lake?

A. Something like that. I wasn't gone very long, I know that.

Q. Could it have been longer than five days?

A. I don't believe it could have been longer than five days.

Q. Could it have been less than four days?

A. I don't believe it could have been less than four days, no.

Q. As you recall, it was a minimum of four days and a maximum of five?

A. Four to five days, I'd say.

Q. All right. Now, can you get the date of this thing any more narrowly defined in your memory, can you fix it by month?

A. No, I couldn't fix it by month. May I go ahead and answer a little further?

Q. Go ahead if you like.

A. The reason I believe it was the winter of '47 or early in '48 is because Graham Dolan at that time had not come back to work for the International Union of Mine, Mill and Smelter Workers, and it was cold, definitely cold. I remember that.

Q. Well, that fixes it in the wintertime, all right; now, could you fix it by year, was it before the end of '47 or was it after the end of '47?

A. I am sorry. I really don't know if it was the end of '47 or the early part of '48.

Q. You can't fix it between, say, November of '47 and January of '48?

A. No, I couldn't.

Q. Just can't get it any closer than that?

A. Well, it has been a long time since I have been involved in those things.

Q. Well, I understand that. And, on the other hand, you have been able to remember such things pretty specifically as the two-tone color of the car, I thought you could fix it by month the date that you went away

in that car to Denver and came back. You are sure you can't be any more specific than that?

A. No, I couldn't be more specific than that.

Q. Now, incidentally, at that other Denver meeting, the wage conference meeting, which you say was held in May or June of 1948, that was a meeting of delegates, wasn't it?

A. That is right. There were people from all over the International Union.

Q. But there were people who were called "delegates", that is the title they had?

A. I guess they were delegates.

Q. Elected by their respective local unions around the country?

A. Supposedly.

Q. And I suppose in addition to the delegates there were some International Officers and International Represenetatives?

A. That is correct.

Q. And these people who attended that meeting you described, up in that hotel room, these were also delegates to this wage conference, weren't they?

A. That is correct.

Q. Either delegates or officers of the International Union?

A. Or International Representatives, that is correct.

Q. By the way, at this Salt Lake meeting, that was another wage conference, wasn't it?

A. Yes, that was a wage conference.

Q. And the people who attended that were delegates, weren't they?

A. That is true.

Q. Either delegates, or International Officers, or International Representatives of the Union?

A. That is correct.

Q. Am I correct in understanding that the people who got together up there in the swanky Hotel Utah were also delegates or International Officers or International Representatives?

A. That is correct also.

Q. Incidentally, Mr. Petersen, weren't you in charge of arrangements for that wage conference in Salt Lake?

A. Not that I recall.

Q. You recall being in charge of getting the Gold Room at the Hotel Newshouse?

A. We were in the Gold Room at the Hotel Utah, that is correct. I mean, at the Hotel Newhouse.

Q. You don't remember taking care of getting the Gold Room?

A. No, I don't remember making the arrangements.

Q. Or making the arrangements for the conference rooms that were used in connection with that conference?

A. I don't remember that, although it is possible I may have made those arrangements?

Q. Didn't you make arrangements for stenographic assistance at the conference?

A. I don't remember that either.

Q. And for registering the conference delegates?

A. I don't remember that.

Q. You remember after the conference was over writing to the International Office for reimbursement for the expenses of the rent of the Gold Room and other conference rooms, and wages of the stenographers?

A. No, I don't.

(At this time two instruments were marked for identification as Defendant's Exhibits 29 and 29-A, and were handed by Mr. McTernan to Mr. Williams for examination.)

Q. While counsel is looking at that, Mr. Petersen, I am correct in understanding, am I not, that there was only one wage conference or other conference of the Mine-Mill Union in Salt Lake in the year 1947?

A. I was to so many conferences and to so many meetings. If you would give me the opportunity, I would like to explain what I remembered Saturday afternoon and called up Mr. Herring on the telephone and told him in regard to the conferences in Salt Lake.

Q. First let's discuss what I found out Saturday afternoon?

A. All right.

Q. I show you Defendant's Exhibit 29-for identification. Does that document bear your signature?

A. Yes, that is my signature.

Q. Now, reading that letter, does that refresh your recollection as to the part you played in making the arrangements for the conference and the registering of the delegates, and the preparation of minutes?

A. Just because I wrote this letter doesn't mean I made those arrangements. I might have been told to list these things and send them in. I don't remember making those arrangements.

Q. But you do recall that that is your signature?

A. Yes, that is my signature.

Q. And that you wrote that letter on June 30, 1947, right?

A. That's what it says.

Q. And that letter pertains to the same wage conference in Salt Lake that we have been talking about here in connection with your testimony, doesn't it?

A. Will you repeat that?

(The reporter repeated the question.)

A. I don't know.

Q. Can you think of any other wage conference that was held in Salt Lake City at the Hotel Newhouse in May or June of 1947, other than the one referred to in Defendant's Exhibit 29-for-identification?

A. I don't know. May I—

Q. Can you recall it or can't you, Mr. Petersen? Do you remember the question now?

A. I remember being to two conferences.

Q. Can you answer this question: Can you think of any wage conference held in Salt Lake City in the Hotel Newhouse during the months of May and June, 1947, other than the one referred to in that letter, Defendant's Exhibit 29-for-identification, and can you answer that "yes" or "no"?

A. No, I can't.

Mr. McTernan:

We offer Defendant's Exhibit 29-for-identification in evidence, Your Honor.

The Court:

Let it be admitted.

Mr. McTernan:

May we read the document to the jury?

The Court:

Yes.

(Mr. McTernan then read the exhibit to the jury.)

The above exhibit, being Defendant's Exhibit 29, reads in words and figures as follows:)

"D-29"

International Union of Mine, Mill & Smelter Workers
Regional Offices: 409-410 Hooper Building
23 East First South
Salt Lake City 1, Utah

30 June 1947

Mr. John C. Clark,
Secretary-Treasurer.

Dear Sir and Brother:

This morning I received a memo from Travis asking that an itemized account of the conference be sent to the International so that you could remit.

Following is a list of the expenses:

Hotel Newhouse:

Gold Ball Room (2 days) $17.50 per day	$ 35.00
3 conference rooms @$3.00 each	9.00
Stenographic work—Edna Richardson	24.00
Stenographic work—Carol Spratling	12.00
Stenographic work—Della Pitts	36.00
	$116.00

Note: The stenographic work includes the cutting of stencils and the mimeographing of all reports etc . . .

Inasmuch as the conference delegates did not put down their specific addresses, we are not able to send the minutes and reports of the conference direct to the delegates. Therefore we are sending them to the International under separate cover for distribution. We will be

unable to bill you for the telephone calls and telegrams until we receive our phone bill.

FRATERNALLY,

(S.) JAMES E. PETERSEN,

(James E. Petersen.)

(written) Ok Clark

Q. Now, the stenographers who were employed in connection with that conference were employed, among other things, to take down minutes of the conference, isn't that right?

A. That is correct.

Q. And to prepare from the registration at the conference a list of the delegates who attended the conference, isn't that right?

A. I presume that to be correct.

Q. And isn't it a fact that those minutes were assembled together with a list of the delegates together with certain reports of committees and issued in the name of the International Union as minutes of the conference?

A. Probably were.

Q. And isn't it a fact that work was done under your supervision and direction?

A. I am not so sure it was done under my supervision and direction. It might have been under Arthur Ashby's supervision.

Q. You recall now, don't you, writing the letter to the International Office saying that you had been unable to send the minutes out to the delegates because you didn't have their addresses?

A. Yes, that is right.

Q. And did those minutes, so far as you know, correctly reflect what transpired at the conference?

A. As far as I know I suppose they did.

Q. Including the persons who were there?

A. Probably so.

Q. And you sent copies of the minutes to the International Office, didn't you?

A. I presume that I did.

(At this time an instrument was marked "D-30".)

Q. At the time that these events transpired, namely, in June or July of '47, it was the practice of the International Union to remit expense money by check, was it not?

A. Yes, that is correct.

Q. And didn't the check come to you attached to a voucher which contained entries explaining the amounts recited in the check?

A. We sent in the expense voucher and they sent in the check.

Q. Well, the check had a piece of paper attached to it showing what the expenses were for?

A. I believe so.

Q. I show you Defendant's Exhibit 30-for-identification. Do you remember receiving the original of that check?

A. No, I don't remember receiving the original of it, but I probably did.

Q. Well, as you look at it, and look at Defendant's Exhibit 29, would you say that that check was made payable to you in response to the items totalling $116.00 set out in your letter of June 30th?

A. Yes, I would say that is correct.

Mr. McTernan:

We offer Defendant's Exhibit 30-for-identification in evidence, Your Honor.

Mr. Williams:
No objection.

Defendant's Exhibit 30 was thereupon received in evidence by the Court and reads in words and figures as follows:

"D-30"

Voucher No. 9822
International Union of
Mine, Mill and Smelter Workers
Suite 1299 Adams-Franklin Building

Chicago, Ill., July 3, 1947

Pay to the order of James E. Petersen $116.00 I. U. of MM&SW $116 & 00 Cts

INTERNATIONAL UNION OF
MINE, MILL AND SMELTER
WORKERS

By .....
Countersigned President

.....
Sec'y-Treas.

Amalgamated Trust & Savings Bank
2-340 Chicago, Illinois

Detach before Depositing Your indorsement of check is sufficient receipt

Description	Amount
Conference covering all Councils held in Salt Lake City June 21, 1947	
Rent—Acct. #611	44.00
Stenog. help—Acct. #603	72.00
	$116.00

23 E. First So.,
Salt Lake City, Utah

* * * * * * * * *

Mr. McTernan:
May it be read to the jury?

The Court:
Yes.

(Mr. McTernan then read Exhibit 30 to the jury.)

Q. "23. E First South, Salt Lake City, Utah", was the address of your office in Salt Lake City, wasn't it?
A. Yes, it was the District No. 2's office.
Q. Well, it was the office you used?
A. Yes, we were up above it.

(At this time a document consisting of nineteen pages was marked for identification as Defendant's Exhibit 31, and was handed to opposing counsel for examination.)

Q. I show you Defendant's Exhibit 31-for-identification, Mr. Petersen. Is that a copy of the minutes that were prepared for that conference at the Hotel Newhouse in 1947?

A. Yes, this is the list of the people who were there at that conference in 1947.

Q. And those are the minutes of the conference, is that right?

A. I didn't look at the minutes. (Examines exhibit again.)

Yes, I would say they were the minutes.

Mr. McTernan:

We offer them as Defendant's Exhibit 31, Your Honor.

The Court:

The Court hears no objection so they will be admitted.

Mr. Herring:

I would like to ask him a couple of questions, if I may, on voir dire, as a predicate for objection.

The Court:

All right.

Examination on Voir Dire.

Questions by Mr. Herring:

Q. Mr. Petersen, do you know of your own knowledge that that is a true and correct copy of the minutes of that conference?

A. It appears to be.

Q. That is not the question. Do you know of your own knowledge?

Mr. McTernan:

I submit that the question has been answered, Your Honor.

The Court:

Yes.

A. No, I don't.

Mr. Herring:

I asked him if he knew of his own knowledge and he said, "No, I don't."

Mr. McTernan:

I don't see any value in counsel repeating it.

The Court:

Objection sustained.

Mr. McTernan:

May the last answer be stricken?

The Court:

Yes, and the jury will disregard the same.

Q. Do you know of your own knowledge whether or not this document that counsel has tendered you, which is a mimeographed document, contains a true and correct list of all the people there and what happened there?

Mr. McTernan:
I object to this on the ground it has been asked and answered.

The Court:
Objection overruled, if he knows.

A. Of my own knowledge, how could I know?
Q. Do you or don't you?
A. Of my own knowledge I don't.

Mr. Herring:
I object to the introduction of the document.

The Court:
Objection overruled. He said it appeared to be the minutes of the meeting he attended.

Mr. Herring:
It appeared to be, but it is not, based on his own knowledge.

The Court:
Objection overruled.

Defendant's Exhibit 31, consisting of nineteen pages, was thereupon received in evidence, and reads in words and figures as follows:

"D-31"

Minutes and Reports
of
Mine, Smelting and Refining Conference
Held in Salt Lake City, Utah

June 22-23, 1947

International Union of Mine Mill and Smelting Workers—CIO
Delegates

Delegates

Name—Address	Local Union
Maurice Travis, President—Chicago, Illinois	
John Clark, Acting Sec'y.—Chicago, Illinois	
Leonard Douglas, Ex.Bd.Member—Flat River, Missouri Dist. #4	
Orville Larson, Ex.Bd.Member—Globe, Arizona Dist. #2	
William Mason, Ex.Bd.Member—Butte, Montana Dist #1	
Bernard Stern, Res. Director—Chicago, Illinois	
Arthur Ashby, Int. Rep.—Salt Lake City, Utah	
Verne Curtis, Int. Rep.—Ely, Nevada	
Howard Goddard Int. Rep.—Kellogg, Idaho	
George Knott, Int. Rep.—Globe, Arizona	
Howard Lee, Int. Rep.—Joplin, Mo.	
John Marshal, Int. Rep.—Bartlesville, Oklahoma	
Jos. J. Mason, Int. Rep.—Butte, Montana	
James E. Peterson, Int. Rep.—Salt Lake City, Utah	

Name—Address	Local Union
S. Schnaittacher, Int. Rep.—Salt Lake City, Utah	
Willard J. Morris—Salt Lake City, Utah Dist. Union #2	
George J. Wilde—Salt Lake City, Utah Dist. Union #2	
Oscar Hills—Butte, Montana	1
John McLeod—Butte, Montana	1
Duane McCandless—Pleasant Grove, Utah	2
P. J. Lane—Wallace, Idaho	14
Ted Bush—Kellogg, Idaho	18
J. L. Cochran—Tacoma, Washington	25
Jos. C. O'Neill—San Francisco, California	50
Joe Peters—Crockett, California	51
H. L. Shrum—Selby, California	51
Harry Pack—Tooele, Utah	65
B. G. Provencio—Hurley, New Mexico	69
John Lannan—Bartlesville, Oklahoma	70
C. O. Parker—Bartlesville, Oklahoma	70
Peter Cioni—Peru, Illinois	85
Clarence Ball—Lark, Utah	91
Kimble Kane—Midvale, Utah	91
Robert H. Jackson—Lark, Utah	91
Clarence M. Reynolds—Salt Lake City, Utah	91
Chase. Abate—Langeloth, Pa.	95
D. L. Malone—Burgettstown, Pa.	95
Thomas Heurtson—Park City, Utah	99
J. A. O'Keefe—Park City, Utah	99
J. Frank Payne—Park City, Utah	99
Vernon L. Winters—Ruth, Nevada	124
Thomas Gooch—Danville, Illinois	209
Milton Blackham—McGill, Nevada	233
Max E. Baker—Midvale, Utah	331
Frank R. Larson—Midvale, Utah	331

Name—Address	Local Union
James M. Morton—Midvale, Utah	331
C. D. Alexander—Salt Lake City, Utah	347
H. L. Anderson—Salt Lake City, Utah	347
C. E. Baxter—Magna, Utah	347
George Grestorex—Salt Lake City, Utah	347
Con. F. Keith—Garfield, Utah	347
Sydney I. Lester—Garfield, Utah	347
W. J. Madill—Bountiful, Utah	347
C. J. Nagle—Salt Lake City, Utah	347
Harry Nelson—Salt Lake City, Utah	347
Ross O'Neil—Garfield, Utah	347
Harold Warnick—Salt Lake City, Utah	347
Edward Katch—Woodbridge, New Jersey	365
Dave B. Sisco—Ft. Smith, Arkansas	347
J. W. Cowart—Salt Lake City, Utah	392
H. L. Hales—Salt Lake City, Utah	392
Geo. T. Kirby—Salt Lake City, Utah	392
Hyrum Krause—Salt Lake City, Utah	392
R. V. Monger—Salt Lake City, Utah	392
V. B. Reese—Magna, Utah	392
W. P. Reese—Magna, Utah	392
Edw. J. McManama—Leadville, Colorado	393
W. H. Bruschke—Salt Lake City, Utah	395
R. W. Nelson—Murray, Utah	395
Alonzo Norton—Murray, Utah	395
P. T. Hutchings—Pioche, Nevada	407
J. F. Wright—Pioche, Nevada	407
A. L. Morgan—Trona, California	414
C. D. Smothermon—Carlsbad, New Mexico	415
Wm. G. Bates—Douglas, Arizona	470
Joe Dispenza—Bingham, Utah	485
Thomas Mannion—Bingham, Utah	485
J. B. Chavez—El Paso, Texas	501
Selwyn Koyle—Spanish Fork, Utah	526

Name—Address	Local Union
George Martin—Spanish Fork, Utah	526
Wm. A. Timms—Picher, Oklahoma	526
Angel R. Bustos—Bayard, New Mexico	530
Henry F. Moore—Bisbee, Arizona	551
John Gettman—Denver, Colorado	557
Robert Barcon—Miami, Arizona	586
L. F. Hughes—Miami, Arizona	586
W. A. Hughes—Globe, Arizona	586
C. A. Morrell—Miami, Arizona	586
Robert W. Striplin—Miami, Arizona	586
J. L. Terry—Morenci, Arizona	616
J. E. Eldredge—Murray, Utah	640
Walter L. Ewell—Riverton, Utah	640
Elmer H. Wilfong—Flat River, Missouri	648
Chas. R. Brooks—Salt Lake City, Utah	692
L. L. Bills—El Monte, California	700

The meeting was called to Order at 10:00 A. M., June 22, 1947, Newhouse Hotel, Salt Lake City, Utah, by President Maurice Travis. (See attached list for delegates.)

President Travis stated the purpose of the Conference and in detail covered the situation in the International Union on negotiations. He stated that because of the acceptance by other large International Unions, a general pattern of wage increases and other fringe issues has now necessitated a review of the national wage policy as agreed at the Denver Conference, with the possibility of a revision of the policy which in some way will conform with the pattern which has been forced upon us by the other large International Unions. President Travis then spoke briefly on the importance of the pending Taft-Hartley Bill and pointed out the dangers to organized labor that would accrue if this bill becomes law.

In view of the pending Taft-Hartley Bill, a number of motions were passed that this Conference generate as much pressure as possible to have Senator Thomas of Utah return from Geneva, Switzerland, and cast his vote to support the Presidential veto. Telephone calls were made to Senator Thomas in Geneva, to Senator Hatch from New Mexico, and to Senator Malone of Nevada.

In order to give the delegates an idea as to the funds left in the various councils, Acting Secretary Clark submitted the financial reports of the councils, other than the Zinc Council and United States Smelting and Refining Company Council, who handle their own financial reports. Following are financial reports of the funds of the Councils which are handled by the International Office. (See attached reports.)

Delegates from the various councils reported in the following order:

A. Phelps-Dodge

B. AS&R

C. Kennecott

D. Coeur D'Alene

E. Tri-State

F. Lead Belt

G. Zinc Council

H. Potash

I. USSR&M

J. Combine Metals

K. Anaconda

The general information of each delegate reporting for these Councils was to the effect that in most districts negotiations were now in operation—that in some cases a strike vote had been taken and in all such cases had been carried by a substantial majority.

The general consensus was that a program could be drawn up which will solidify the industry and that a real fight be made to back this program. It was felt that this program must be realistic and should be basically on the lines of what has happened nationally.

The Anaconda settlement was reported by the Montana delegates and the International officers who were in on these negotiations. The Anaconda settlement has created a situation which has, without doubt, set a precedent which in the coming negotiations for the balance of the industry has created a barrier for better settlements. It was definitely shown that in the future a mandatory policy drawn up by the International Wage Policy Committee should be adhered to by all locals, and that the contract expiration date on the Anaconda contracts should be leveled off to coincide with the dates of the majority of the other contracts in the industry—June 30.

Brother Stern, the International Research Director, covered in great detail the economic situation on these negotiations, both as to the need of the revision of the

Union's wage demands and the financial and production picture of the non-ferrous industry. (See Report "Net Profit in Non-Ferrous Industry".)

President Travis then appointed committees in order to get down to the basic facts of the Conference and to expedite the business confronting the delegates. (See appointment of committees report.)

At this point the Conference was interrupted due to the fact that the call placed by the Conference to Senator Thomas had gone through to Geneva, Switzerland. Senator Thomas' reaction to our request that he immediately fly home to help sustain the Presidential veto was quite evasive. He said that he was in receipt of word from Washington that enough votes could not be mustered to sustain the veto and that, therefore, a return would be useless.

The conference was adjourned at 4:45 P. M. to allow the appointed committees to work on the matters before them. Conference to reconvene Monday morning at 9:30.

• • • • • • • •

June 23, 1947

The Conference reconvened Monday morning at 9:30. President Travis called the meeting to order and called upon the Committee Chairman to report. (See reports of Committees).

A great deal of discussion took place among the delegates in regard to the committee reports. Several over-

all amendments were made which are incorporated in the committee reports.

President Travis brought the Conference to a close with the remarks that he felt it had been an exceptionally successful conference and that a realistic program had been hammered out by the delegates that would strengthen and expedite the Union's negotiations for wage increases and contract gains for the members of our union.

Respectfully submitted,
(S.) JOHN CLARK,
(John Clark),
Acting Secretary-Treasurer.

ASR Councel Fund 1947—Per Capita Payments ($1.00 per member per year)

Local Union	Amount
25	476.00
52	94.00
51	390.00
72	220.00
84	—
347	953.00
365	700.00
393	—
395	162.00
461	110.00
488	125.00
509	122.00
530	189.00
557	97.00
625	—
640	46.00

Local Union	Amount
672	—
700	104.00
806	—
Total 1947	3,788.00

AS&R Council Fund 1946—Per Capita Payments $2.00 per member per year)

Local Union	Amount
25	1,368.00
50	188.00
51	600.00
[illegible]	394.00
84	238.00
347	1,446.00
365	1,900.00
393	230.00
395	—
461	—
488	200.00
509	200.00
530	360.00
557	218.00
625	150.00
640	86.00
672	52.00
700	100.00
806	—
Unallocated	12.22
Total 1946	7,742.22

AS&R Council Fund 1947

Balance Der. 31, 1946	2,163.24
Jan. 1947 Rereipts	—
Balance	2,163.24
Jan. Expenditures	—
Balance	2,163.24
February Receipts	—
Balance	2,163.24
February Expenditures	138.00
Balance	2,025.24
March Receipts	—
Balance	2,025.24
March Expenditures	192.18
Balance	1,833.06
April Receipts	476.00
Balance	2,309.06
April Expenditures	420.63
Balance	1,888.43
May Receipts	2,660.00
Balance	4,548.53
May Expenditures	2,427.26
Balance	2.121.17
June Receipts through 6-20-47	652.00

Balance	2,773.17
June Expenditures through 6-20-47	817.38
Balance	1,955.79

AS&R Wage and Hour Fund 1947

Balance December 31, 1946	—
January 1947 Receipts	2,757.00
Balance	2,757.00
January Expenditures	—
Balance	2,757.00
February Receipts	316.00
Balance	3,073.00
February Expenditures	1.05
Balance	3,071.95
March Receipts	455.00
Balance	3,526.95
March Expenditures	—
Balance	3,526.95
April Receipts	1.00
Balance	3,527.95
April Expenditures	43.16
Balance	3,484.79
May Receipts	—

Balance	3,484.79
May Expenditures	—
Balance Thrue June 20, 1947	3,484.79

Phelps Dodge Council

Balance Dec. 31, 1946	—
January Receipts	451.70
Balance	451.70
January Expenditures	1.05
Balance	450.65
February Receipts	294.60
Balance	745.25
February Expenditures	—
Balance	745.25
March Receipts	123.80
Balance	869.05
March Expenditures	328.98
Balance	540.07
April Receipts	124.20
Balance	664.27
April Expenditures	—
Balance	664.27
May Receipts	263.60
Balance	927.87

May Expenditures	—
Balance	927.87
June Receipts	356.90
Balance	1,284.77
June Expenditures	—
Bal. @ June 20, 1947	1,284.77

Phelps-Dodge Per Capita Payments

(10c per member per month)

1946

Local	Address	Sept.	Oct.	Nov.	Dec.
470	Douglas, Ariz.	Pd.	Pd.	Pd.	185.70*
501	El Paso, Texas				
541	Long Is. City, N. Y.	61.80	66.20	69.40	68.60
551	Bisbee, Arizona				
616	Morenci, Arizona		49.50	51.90	56.40
700	Los Angeles, Calif.				

1947

		Jan.	Feb.	Mar.	Apr.	May	June
470	Douglas, Arizona	Pd.	Pd.	153.40**			
501	El Paso, Texas		53.80	53.10	53.60	53.60	
541	Long Is. City, N.Y.	68.50	70.00	71.10	75.90	74.60	
551	Bisbee, Arizona						
616	Morenci, Arizona	68.30	70.80	68.60	70.60		
700	Los Angeles, Calif.						

*Lump payment for Sept., Oct., Nov., Dec.

**Lump payment for Jan., Feb., and Mar.

Potash Council—Per Capita Payments

(5¢ per member per month beginning 4 1 47)

Local No.	Address	April	May	June
414	Trona Calif.	25.00	25.00	
415	Carlsbad, N. M.	72.70		
841	Darwin, Calif.			

Potash Council Fund

Balance May 31, 1947	
June Receipts	122.70
Balance	122.70
June Expenditures	
Balance @ June 20, 1947	122.70

Kennecott Council Fund, 1947—Per Capita Payments

Local No.	Address	March	April	May	June
63	Santa Rita, N. Mexico	26.40	27.00	26.70	
69	Hurley, N. Mexico	39.70			
124	Ruth, Nev.	24.30	25.65		
233	McGill, Nevada	32.40	33.40		
485	Bingham, Utah	32.70	31.00		
392	Wagner, Utah	39.00	94.50	92.50	
642	Ely, Nev.				
692	Bingham, Utah	6.30	6.50		

*Per Capita starts March 1947, except #642 which starts April 1947.

Kennecott Council Fund

Balance April 30, 1947	
May Receipts	372.90
Balance	372.90
May Expenditures	
Balance	372.90
June Receipts to 6-20-47	217.15
Balance	590.05
June Expenditures to 6-20-47	28.08
Balance @ 6-20-47	561.97

Appointment of Committees.

Contract & Wage Demands Committee:
Wes Madill, Chairman
Louis Cochran
Howard Lee
Connie Keith
Joe Peters
John Marshall
William Bates
Abden Chavez
Orville Larson
Bernard Stern

Strategy Committee:
Chet Smothermon
Ted Bush

Ed Kath
Bud Reese
George Knott
Ross O'Neill
Chase Powers
Kimble Kane
James Clark

Strike Committee:
Charles Brooks
Bill Mason
Joe O'Neil
Howard Goddard
Curley McLeod
C. O. Parker
Robert Bartone
John Gettman
L. L. Bills

Mining, Smelting and Refining Conference, International Union of Mine, Mill and Smelting Workers. Salt Lake City, Utah, June 22 and 23, 1947.

Wage and Contract Policy.

The 11½¢ wage offer of major companies currently proposed to the Union in settlement of economic issues in dispute in the sub-standard non-ferrous metals industry is flatly inadeqate.

The events of the past few months, however, compels recognition of the need for revising our original demands. We accordingly recommend that it be the policy of this conference to advance a program which includes at least one dollar ($1.00) per day increase and

six (6) paid holidays or their equivalent. In addition, sick leave and benefit plans, and, where necessary, proposals for the elimination of inequities shall be presented.

The following are additional minimum requirements which must be included in all contracts:

#. Preamble—The International must be a party to all contracts. (refer to Denver conference wording)

#. Union Security—Maintenance of membership and check-off.

#. Termination—A common expiration date of June 30, 1948.

#. Portal Pay Suits—No contract clause pledging unions not to either initiate or support existing or future claims against companies for portal pay shall be accepted by any local.

* * * * * * * *

* As a matter of policy all wage settlements should be made retroactive to the expiration date of the last contract.

* As a matter of policy a demand will be made for the usual wage reopening clause.

Mining, Smelting and Refining Conference, International Union of Mine, Mill and Smelter Workers, Salt Lake City, Utah, June 22 and 23, 1947.

Policy on Bargaining and Strike Strategy

1. The key to winning satisfactory settlements is to be prepared to show real strength in support of our revised wage and contract program, particularly in the leading companies in the non-ferrous industry.

2. As soon as it is clear that an employer refused to meet our revised demands the local or locals involved should take votes to empower the negotiating committees to call strikes and set up local machinery to carry strikes to successful conclusion.

3. The National Wage Policy Committee should coordinate the actual timing of strikes and their concentration in the most effective areas and against the main companies in such a way that maximum pressure is exerted on the employers involved within the next thirty (30) days.

4. No local union shall accept any settlement inferior to the demands indorsed here and in any case should secure approval of the council having jurisdiction and the national wage policy committee.

5. No plant unit of a company or area council should accept any minimum uniform settlement until all units have received a uniform settlement.

6. Sections of the industry such as Potash, the Lead Belt, A. S. & R. should function through the National Wage Policy Committee in such a way that strike action therein will contribute to securing the maximum expression of strength in such companies as Phelps Dodge, Kennecott, and the Coeur d'Alene operations.

Mining, Smelting and Refining Conference, International Union of Mine, Mill and Smelter Workers. Salt Lake City, Utah, June 22 and 23, 1947.

Report of the Strike Fund Committee

The committee determined that its purpose was to devise ways and means of raising funds to assist in prosecuting to a successful conclusion the strike with which our Union is faced.

It was learned from Acting Secretary-Treasurer Clark that the International Union, due to the secessionist struggle, does not at this time have available funds which might be devoted to relief of striking members.

It was felt that the tough attitude of the employers might be, in part at least, due to a mistaken belief on their part that the International Union is so weakened both financially and organizationally as to be in no position to enter into strike struggles.

The committee agreed on two main points:

A. That an immediate fund for strike purposes must be raised.

B. That provision must be made to insure sufficient further financial aid to strikers, as may be necessary, in the event strikes take place.

Some members of the committee expressed the feeling that an assessment should be levied by the International Executive Board, but this idea was rejected by the majority of the committee on the ground that it would be

incorrect at this time due to our recent struggle with the secessionists.

The majority of the committee felt that sufficient funds could be raised through a voluntary plan. Therefore, the following plan was formulated and approved by the committee:

1. That the International Union build a strike fund to be used exclusively as such.

2. That a strike fund be raised immediately by requesting all local unions in the International Union to contribute $1.00 per member. It was felt that contributions to this fund might be termed "Strike Insurance", since the immediate raising of such a fund would effectively and dramatically prove to wishful thinking employers the ability of this Union to carry on a fight on the picket line, if necessary.

3. That effective as of the date of the beginning of the first major strike all local unions in the International Union be requested to contribute $1.00 per week for each member employed to the strike fund.

4. That all strike funds collected be forwarded to the International Secretary-Treasurer.

5. That the disbursement of strike funds be administered by the International officers and Executive Board members in accordance with established practice.

6. That the International officers and Executive Board members designate a working committee to promote the

raising of strike fund and that in addition such a working committee be established in each local union.

Entirely apart from the above recommendations, the committee felt, and so recommends, that the International Executive Board should levy an assessment at the earliest date. It feels it would be practicable and expedient to do so, in order to aid in solving the financial difficulties into which we have been forced by the secessionists.

Research Department,

IUMMSW—CIO.

June 19, 1947.

Net Profits of Nonferrous Metal Companies
(In thousands of dollars)

	Column 1 Net Profit 1st Quar. 1947 (000's omitted)	Column 2 Annual Rate of Profit Based on Column 1	Column 3 Average Net Profit 1936-1939	Column 4 Average Net Profit 1942-1945
American Metal Company	1,564	6,256	2,896	2,607
American Potash & Chem Co.	575	2,300	2,528	1,413
American Smelting & Ref.	13,844 [1]	27,688	14,771	11,024
Amer. Zinc, Lead & Smelt. Co.	319	1,276	126	864
Anaconda Copper Mining Co.	12,400	49,600	19,263	30,512
Bunker Hill & Sullivan M. & Conc. Co.	335 [1]	670	1,401	1,297
Calumet & Hecla Cons. Copper	877	3,508	875	1,132
Climax Molybdenum Company	598	2,392	7,641	9,662
Consolidated Coppermines Corp.	323	1,292	429	390
Eagle Picher Min. & Smelt. Co.	1,250 [2]	5,000	441	1,265
Federal Mining & Smelting Co.	503	2,012	879	1,147
Hecla Mining Company	227	908	822	1,296
Howe Sound Company	378	1,512	2,978	1,179
Illinois Zinc Company	171	684	d 76	316
Inspiration Cons. Copper Co.	1,128	4,512	664	1,568

Questions by Mr. McTernan (Cont'd):

Q. As you were looking over these minutes you looked carefully to see if the name of Clinton Jencks was included in the names of delegates present, did you?

A. Yes, I did.

Q. And you didn't find it?

A. No, I didn't.

Q. And you didn't find the name of Chase Powers among the delegates, did you?

A. No, I didn't.

Q. And you didn't find the name of William Gately among the delegates?

A. No, I didn't.

Q. And you testified the other day that those three people were there, didn't you?

A. I testified that those three people were at a meeting in a hotel room in the Hotel Utah and I will still testify to that.

Q. Do you remember telling me a few minutes ago that all of the persons who went to the meeting at the swanky Hotel Utah were delegates to the conference, you remember saying that a few minutes ago?

A. Yes, I do.

Q. You want to change that now?

A. May I answer this—

Q. Answer that "yes" or "no". You want to change that now, Mr. Petersen? You want to change your testimony?

A. I want to say this—

Q. And that question "yes" or "no", please. You want to change your testimony now, Mr. Petersen?

A. I want—

Q. Answer "yes" or "no", please. You want to change your testimony?

A. I don't know how to answer.

Q. Now, when these minutes were prepared and submitted to the International office you hadn't accepted a job with Kennecott Copper, had you?

A. Beg your pardon?

Q. I say, at the time these minutes were prepared and submitted to the International office you had not accepted a job with Kennecott Copper, had you?

A. No, I hadn't.

Q. And you hadn't even been offered a job with Kennecott Copper, had you?

A. No, I hadn't.

Q. And you hadn't volunteered any information to the F. B. I., had you, Mr. Petersen?

A. No, I hadn't.

Mr. McTernan:

No further questions.

On Re-Direct Examination.

Questions by Mr. Herring:

Q. Mr. Petersen, when Mr. McTernan was more or less badgering you to answer "yes" or "no"—

Mr. McTernan:

Now, Your Honor—

The Court:

No, the Court is not going to stand for any of that. We have conducted this trial in an orderly manner.

Mr. Herring:

I am sorry, Your Honor. I concluded that way. If I am wrong, I am wrong.

Q. Mr. Petersen, when you took the witness stand I asked you a question regarding an explanation you wished to make concerning some of your testimony. I wish you would explain now what you wanted to explain with reference to any of the meetings you testified about on direct examination?

Mr. McTernan:

Your Honor, we object to this, not because we want to prevent the witness from changing his testimony if he wants to, but I think it should be done by appropriate questioning so we may have an opportunity to protect ourselves.

The Court:

Yes, if the witness feels he has made a mistake or an inaccurate statement he will have an opportunity to correct himself but you will ask him about what.

Q. All right, Mr. Petersen, let me see, if I remember correctly you testified the other day that you attended a meeting in May or June, 1947, in Salt Lake City, is that correct?

A. That is correct.

Q. And what kind of a meeting did you testify that was?

A. I testified that it was a Mining and Smelting and Refining Conference.

Q. Well, is that correct?

A. No: There were two meetings, and in my previous testimony I got them confused. I got the date confused. Now, I don't want to change my testimony in regard to the meetings I attended and as to who was there because they were there. I only got subpoenaed a little over a week ago, and it has been five, six, seven years

since all this stuff took place, and I came here to tell the truth, and I have been doing my best to remember what happened during this period of time; and Saturday afternoon, while laying on the bed in the hotel room, you will remember I told you I was in my underwear and suddenly I remembered, got to the telephone, called you and told you about it.

Q. Yes?

A. All right. Now, then, I attempted to tie these things together. The meeting in the hotel room in the Hotel Utah, that tied in with this telephone call that I made to Geneva, Switzerland, by tying events together, it is hard to get the dates. All right, at another meeting of the International Union of Mine, Mill and Smelter Workers, and I don't recall the exact date, it was another Mining, Smelting and Refining Conference, Wage Conference. That is the meeting at which the comrades within the International Union of Mine, Mill and Smelter Workers met at the hotel room in the Hotel Utah. Now, at this meeting, where these things were introduced, most of the people there were from District Union No. 2. There were a few outside visitors, a few delegates from different bargaining councils, and that meeting, in Salt Lake City in 1947, that is the meeting I was trying to tie into my memory with the meeting in the hotel room in the Hotel Utah; but it was the other meeting, the Mining, Smelting and Refining Conference, when Gately was there, and these other people were there, that I testified to; and when I remembered this I immediately called you on the telephone to tell you.

Q. Correct. Now—

Mr. McTernan:

Well, now, may we cross-examine Mr. Herring on the last statement? I know he was not in Salt Lake City.

The Court:
I assume he meant he was correct in telephoning.

Mr. Herring:
My statement was that it was correct that he called me on the telephone. I don't like the inference counsel made.

Mr. McTernan:
I don't like the inference that counsel put in the testimony.

Mr. Herring:
You want to cross-examine me?

The Court:
No, we will go ahead with this witness.

Q. Mr. Petersen, in line with your explanation there, let me ask you again, did you attend a Communist meeting in the Hotel Utah with people you named on your direct testimony?
A. I did.

Mr. McTernan:
I object to this on the ground it is leading and suggestive, and calls for his opinion and conclusion.

The Court:
Objection overruled.

Q. Can you give us an approximate time of that wage conference where the Communist meeting was held at the Hotel Utah, the best you recollect?

A. I don't know if I can remember exactly, but actually the cross-examination that the attorney gave me the other day helped me to remember.

Q. You mean Mr. McTernan's cross-examination?

A. That's right. He helped me to piece this thing together in my memory, and then I—

Mr. McTernan:

I don't understand what all this has to do with any pending question.

Mr. Herring:

He is explaining.

Mr. McTernan:

He hasn't asked for any explanation, Your Honor.

Q. All right, give me an explanation?

Mr. McTernan:

I submit this is no way to conduct the examination of a witness.

The Court:

Objection sustained.

Q. Did you attend a Communist meeting in Salt Lake City in a hotel room in the Hotel Utah?

A. I did.

Q. Do you recall approximately when it was?

A. I believe it was winter, late '47 or early '48, whenever the Mining, Smelting and Refining conference for the International Union was held.

Q. Was Clinton Jencks there?

A. Clinton Jencks was there.

Q. State whether or not, if you recall, this was a closed Communist meeting?

Mr. McTernan:

I object on the ground it is leading and suggestive.

The Court:

Well, he said whether or not it was an open or closed meeting. Objection overruled.

A. Yes, sir, it was a closed meeting of Party members within the union.

Q. Of the Party members within the union?

A. Of Mine-Mill, yes.

Q. Were there any persons at that closed meeting who were not members of Mine-Mill, if you know?

A. No, not that I know.

Q. Your best recollection, as you have stated, is that it was held in late '47 or early '48, is that right?

A. In all probability in early '48, because that is the usual time they held their wage conferences, as Mr. McTernan reminded me.

Q. Do you remember exactly?

A. No, I don't remember exactly.

Q. At the meeting that you testified about on cross-examination this morning, and to which these alleged minutes referred—

Mr. McTernan:

I don't know what the meaning of all this is. The witness has identified the minutes and I don't know why these speeches have to be made.

Mr. Herring:

He testified that they appeared to be the minutes.

The Court:

That is right.

Q. At the meeting that apparently was held as reflected by the minutes here, and which counsel has introduced in evidence, do you know of your own knowledge and recollection, that's been six years or more, do you know whether or not for certain that Clinton Jencks was at that meeting?

A. I don't remember Jencks being at the meeting that was held where all the District Union No. 2 people were, when all those fellows were there, no. He's got the two meetings mixed up, that's all.

Q. Mr. Petersen, referring now to the closed Communist meeting in the Hotel Utah in late '47 or early '48, were there minutes kept of that meeting?

A. Not to my knowledge, of no Party meetings.

Q. You were a Communist for a number of years. Did you attend a few or a number of Communist meetings?

A. I attended lots of Communist Party meetings.

Q. Do you know whether or not minutes of those meetings were ever kept?

A. I have never seen any minutes kept in any Party meeting, no.

Q. Do you know whether or not there were minutes kept of the wage conference which was held, according to your testimony, in late '47 or early '48?

A. In all probability there were minutes kept of that.

Q. Do you know of your own knowledge?

A. No.

Q. Did you have anything to do with the keeping of those minutes?

A. No.

Q. In late '47, or middle '47, or the early part of '48, what was your position with the union?

A. I was an International Representative for Mine-Mill.

Q. In your capacity as such, do you know of your own knowledge the various districts which the union had set up at the time?

A. Yes.

Q. Were you at that time and are you now familiar with the district of the Mine-Mill union which covers the Bayard-Silver City, area?

A. I have never been down in Silver City, or the Silver City area. I know it is District 2 of the International Union of Mine, Mill and Smelter Workers, which covers Utah, Nevada, Arizona, New Mexico, and Texas, but I have never been to Silver City, New Mexico.

Q. You have never been down to Silver City?

A. No.

Mr. Herring:

That is all.

Mr. McTernan:

Your Honor, we would like a few minutes, maybe fifteen or twenty minutes. We would like to consult with reference to the altered testimony.

Mr. Herring:

I object to the term "altered testimony."

Mr. McTernan:

Well, I understood him to change his testimony.

The Court:

Well, that is a matter that the jury will pass on.

(At this time a recess was had until 10:30 A. M. the same day, at which time proceedings were resumed as follows):

On Re-Cross-Examination.

Questions by Mr. McTernan:

Q. Mr. Petersen, the meeting that was held at the Newhouse Hotel in Salt Lake City was a Mining, Smelting and Refining Conference, is that right?

A. Which meeting?

Q. Well, the one that you testified to before you began cogitating in your underwear, the one on your first direct examination

A. The Mining, Smelting and Refining Conference?

Q. Was that a Mining, Smelting and Refining Conference?

A. I am not positive.

Q. Well, did Defendant's Exhibit 31 assist you, Mr. Petersen?

A. Yes.

Q. Notice the title here (indicating), "Minutes and Reports of Mine, Smelting and Refining Conference", isn't that what it says?

A. That's what it says.

Q. And that was held in the Newhouse Hotel in the Gold Ball Room, right?

A. Right.

Q. In Salt Lake City?

A. Right.

Q. In the latter part of June, 1947?

A. That is right.

Q. And there is no question in your mind but that it was a Mining, Smelting and Refining Conferece, is that right?

A. Right.

Q. Now, you say this other meeting that was held in Salt Lake in late '47 or early '48 was also a Mining Smelting and Refining Conference?

A. Yes. Yes, I believe it was.

Q. That is your best recollection?

A. Yes.

Q. You are not confusing that with another meeting that was held in late '47 or early '48 in Denver, are you? You recall that you testified on your direct examination that there was a conference in Salt Lake in June of '47 at which you saw Jencks?

A. Yes.

Q. And then there was this meeting in late '47 or early '48 in Denver that you traveled to in a two-tone blue Studebaker with some friends, where you saw Jencks?

A. Right.

Q. Now, you are not confusing this meeting that you testified to here this morning in response to Mr. Herring's question with the Denver meeting, are you?

A. No.

Q. You couldn't possibly be confused about that, could you?

A. No.

Q. This meeting that you testified to in response to Mr. Herring's question was a meeting in Salt Lake?

A. Where we held the meeting in the hotel room in the Hotel Utah, right.

Q. And this meeting, second meeting which you testified to in response to Mr. Herring's question was a Mining, Smelting and Refining Conference?

A. To the best of my kowledge.

Q. Of Mine-Mill?

A. Right.

Q. Now, this conference was held at about the time of the legislative battle over Taft-Hartley?

A. No, Taft-Hartley was passed in 1947. It's called "The Labor and Management Relations Act of 1947."

Q. But you placed this second meeting in late '47 or early '48. I want to know if that is your recollection, that that meeting was held about the time of the final battle with Taft-Hartley, when you made the phone call to Senator Thomas?

A. I don't believe so.

Q. Now, you were very positive when you first testified here that the meeting at which you saw Jencks in the Hotel Utah was held in Salt Lake in June of '47 because you remembered so distinctly making the only transatlantic telephone call of your life at that time?

A. I still remember making that call.

Q. But you don't any more correct it with seeing Jencks in Salt Lake, is that right, in a Communist meeting in the Hotel Utah?

A. No.

Q. You don't connect that, that doesn't aid your recollection anymore?

A. No.

Q. Now, have you consulted anything with reference to your recollection, any documents, since you were on the stand here last week?

A. No, I haven't.

Q. Have you talked to anybody about your recollection since you testified here last week?

A. Oh, I talked to the attorneys.

Q. That's the idea. Who?

A. Oh, I called Mr. Herring and told him.

Q. Anyone else?

A. No.

Q. Any representatives of the F. B. I.?

Climax Molybdenum Company	598	2,392	7,641	9,662
Consolidated Coppermines Corp. ..	323	1,292	429	390
Eagle Picher Min. & Smelt. Co. ...	1,250 [2]	5,000	441	1,265
Federal Mining & Smelting Co.	503	2,012	879	1,147
Hecla Mining Company	227	908	822	1,296
Howe Sound Company	378	1,512	2,978	1,179
Illinois Zinc Company	171	684	d 76	316
Inspiration Cons. Copper Co.	1,128	4,512	664	1,568
Int. Minerals & Chemicals	1,514	6,056	405	1,979
Kennecott Copper Corp.	18,538 [1]	37,076	32,988	40,726
Miami Copper Co.	1,751 [1]	3,502	318	872
Mountain City Copper Co.	NR		605	47
New Jersey Zinc Company	2,368	9,472	5,411	5,915
Park Utah Cons. Mines Co.	17	68	25	168
Phelps Dodge Corp.	15,397 [1]	30,794	11,268	12,730
Potash Company of America	NR		305	1,689
St. Joseph Lead Co.	3,014 [1]	6,028	4,066	4,918
Sunshine Mining Company	NR		4,035	927
Tintic Standard Mining Co.	NR		543	59
U. S. Potash Company	NR		1,278	1,761
U. S. Smelt., Ref. & Min. Co.	481 [3]	2,886	5,360	2,955
Totals		205,492	122,245	140,418

[1] For 6 mo. ended 12/31/47

[2] For 3 mo. ended 2/28/47

[3] For 2 mo. ended 2/27/47

NR—Not reported.

d—Deficit

A. No.

Q. Any representatives of Kennecott Copper?

A. No.

Q. Now, can you fix more definitely this second meeting in Salt Lake—withdraw that. For purposes of ease of reference I am going to refer to the first Mine, Smelting and Refining Conference, the one in June, as the first Mining and Refining Conference; and the one you testified to here this morning in response to Mr. Herring's questions as the second Mining, Smelting and Refining Conference. Do you so understand it, so we will have no confusion?

A. I think so.

Q. Now, directing your attention to this second Mining, Smelting and Refining Conference, was that held in the calendar year '47 or the calendar year '48?

A. I am not sure. I think in '48.

Q. What is your best recollection?

A. I think in '48.

Q. In '48?

A. I believe so.

Q. Was there any other Mining, Smelting and Refining Conference of Mine-Mill held in Salt Lake City in the calendar year 1947 other than the one that we have here identified as the first Mining, Smelting and Refining Conference, the one concerning which Defendant's Exhibit 31 is the minutes?

A. I honestly don't know.

Q. You mean you have no recollection at all?

A. I have the recollection that I was either going to a meeting, coming from a meeting, or in a meeting. I was in meetings all the time, day in and day out, all the time I worked for the International Union, hundreds of meetings.

Q. Well, there weren't hundreds of Mining, Smelting and Refining Conferences?

A. No.

Q. As a matter of fact, there were a lot of local Smelting and Refining Conferences that led up to it?

A. That is right.

Q. And that was part of the activities for developing the sentiment and feeling for the union for its wage and contract demands, isn't that right?

A. That is correct.

Q. Now, is it your recollection that the Mining, Smelting and Refining Conference, the one that we called the first one, recorded in Defendant's Exhibit 31, led up to this second one, the one we have identified as the second conference that was held in the year 1948?

A. I don't recall if that led up to the second one or not.

Q. But in any event you recall that the second one happened in the year 1948?

A. I said to the best of my knowledge I think it was '48, if I remember correctly.

Q. Would the month of February, 1948, strike any responsive note in your memory?

A. No.

Q. Where was it held in Salt Lake City, you know?

A. I believe it was held in the Newhouse Hotel too.

Q. Do you recall whether that meeting took place around the 16th of February, 1948?

A. No, I don't.

Q. Do you remember whether following the meeting there was an Executive Board Meeting of the National Union?

A. I remember an Executive Board Meeting of the International Union in Salt Lake City.

Q. Right after the Mine, Smelting and Refining Conference?

A. I don't recall if it was right after the Mining, Smelting and Refining Conference or not.

Q. Do you remember whether there was any gap of time at all between those two meetings?

A. No, I don't.

Q. You, in the regular course of business, received the minutes of the various conferences which the International Union held, didn't you?

A. Yes, I did.

Q. And you looked at them?

A. Yes, I looked at them.

Q. Mr. Petersen, isn't it true that the Mine, Smelting and Refining Conference, the one we have identified as the second one, was attended by the National officers and Executive Board Members of the Mine-Mill?

A. They came from all over the union to this meeting.

Q. I am particularly anxious now about national officers and national board members. They were there, weren't they?

A. To the best of my ability they were there, yes.

Q. Wasn't it the regular practice when they convened for one of these conferences that followed the conference board members and officers convened a meeting of the National Executive Board of the Mine-Mill?

A. I believe that was the practice.

Q. Now, can you think of any Mine, Smelting and Refining Conference held in Salt Lake City in the year 1947 other than the one recorded in Defendant's Exhibit 31?

A. Well, I don't know whether the second one that you referred to was held in '47 or not.

Q. Well, let's exclude that for a moment, other than those two?

A. Well, there was another one, I think, a District Union No. 2 convention.

Q. I am talking about a Mine, Smelting and Refining Conference?

A. That's the only one I can think of.

Q. Can you think of a Smelting and Refining Conference held in the year 1948 in Salt Lake other than the one we have identified here as the second Mine, Smelting and Refining Conference?

A. No, I don't think so.

Q. Was the meeting that was held in Salt Lake City at this second conference called a National Wage Policy Meeting?

A. It might have been.

Q. And there was a meeting of what was called the Wage Policy Committee?

A. That could have been very possible.

Q. And that was composed of delegates from the Mining, Smelting and Refining areas?

A. I believe that is true.

Q. And from the brass area?

A. I believe that is true.

Q. And the Casting areas?

A. Yes.

Q. That is the way you remembered it, isn't it, Mr. Petersen?

A. That is the way I remember it, yes.

Q. And, in addition, members of the International Executive Board attended that National Wage Policy Committee Meeting?

A. I believe that is correct.

Q. And certain International Representatives?

A. That is true.

Q. Who weren't delegates?

A. That is true.

(A document, consisting of fifty-three pages, was marked as Defendant's Exhibit 32-for-identification.)

Q. I show you Defendant's Exhibit 32-for-identification, and particularly the second page from the top, and ask you if you recognize that document as the minutes of the second conference in Salt Lake that we have been talking about here this morning?

A. Well, this looks like the kind of minutes the International Union puts out.

Q. That is not my question?

A. I can't positively identify it. I never wrote it.

Q. Weren't you there?

A. Yes, I was in Salt Lake City at the time, working for the International Union.

Q. Were you at the conference at the time?

A. Yes, I was at the conference.

Q. Don't you recognize those as the minutes of the conference?

A. No, because I don't recall what the minutes of the conference were.

Q. Didn't you testify—withdraw that. Do you recall testifying a few minutes ago that you regularly received the minutes of the various conferences that were held?

A. Yes, I regularly received the minutes of the conferences.

Q. Well, you were a serious representative of the Mine-Mill at that time?

A. Yes, I was.

Q. Didn't you read the minutes for guidance as to how to conduct your activities?

A. Yes, I did do that.

Q. Don't you recognize those minutes as minutes of that second conference in Salt Lake City that you testified to here this morning?

A. All right, these look like the minutes.

Q. And they refresh your recollection that the meeting was held beginning February 16, 1948?

A. This is the Executive Board Meeting, yes.

Q. Well, look at the second page, to which I directed your attention, doesn't that indicate the date there (indicating)?

A. February 16, yes.

Q. 1948?

A. That is right.

Q. And the first entry there records (indicating) the meeting of this National Wage Policy Committee with the representatives of the Mining, Smelting and Refining, is that right, Mr. Petersen?

A. That is right.

Mr. McTernan:

We offer Defendant's Exhibit 32-for-identification in evidence.

Mr. Herring:

Your Honor, the witness testified he didn't know for sure whether they were the minutes.

Mr. McTernan:

He testified they appeared to be the minutes.

The Court:

Objection overruled.

Mr. McTernan:

Is the document in evidence, Your Honor?

The Court:

Yes.

Defendant's Exhibit 32, having been received in evidence by the Court, reads in words and figures as follows:

"D-32"

Table of Contents

International Executive Board Meeting—IUMM&SW-CIO

February 16-21, 1948

Salt Lake City, Utah

	Page
National Wage Policy Committee	1
Motion on Newhouse Hotel	2
Letter to MacKenzie King	3
Letter to Newhouse Hotel	4
Report of General Strategy Committee of NWPC	5
Report of Wage and Contract Committee of NWPC	8
Telegrams from Locals 423 and 445	9
Motion on Policy Regarding Salaried Employees	10
Statement on Millard	10
Telegram from Upper Michigan locals	11
Motion on above telegram	12
Motion on duties of Staff personnel	12
Report by President Clark	12
Motion to Support President Clark's Position at CIO Board meeting	13
Discussion on Arbitration cases	13
Motion on CIO Civil Rights meeting	14
Motion on Cancellation of Pressman meeting	14
Financial Report by M. E. Travis, and Actions	15
Discussion and Action on Assessment	15

	Page
Locals Declared Defunct	17
Report on Political activity in Western states by Verda Barnes	18
Political Action Report by Al Skinner	20
Legislative Report by Herman Clott	25
Statement Endorsing Henry A. Wallace	28
Motion and Discussion on Wallace Endorsement	31
Meeting with District Union No. 2 officers	33
Motion to pay bill to Denver Industrial Union Council	34
Motion to pay bill to Local 690	34
Report of Educational Director Graham Dolan	34
Actions on Educational Report	39
Action on District Union No. 2	39
Reports of Board Members	41
Motion to Amalgamate Bayard District locals	41
Motion to extend Gately's leave of absence	42
Motion to grant B. C. District Union $1500.00 loan	42
Motion on Local 18	42
Motion on Local 25	42
Motion on George Knott	43
Motion to send letter to R. A. Mosher, CCL	43
Motion on Local 758	44
Motion on Bernard Stern	44
Motion on bills submitted by Bruner	44
Action on C. M. Marino	44
Motion to pay Mary Kalafatich	44
Report of Appeals Committee on Local No. 9	44
Motion on Zinc Council	45
Letter on slaying of Cuban labor leader, Jesus Menedez	45
Motion on bills submitted by Martin Segal	45
Motion on local and staff bonding schedules	46
Motion on Schnaittacher	46
Motion on new organizers' report form	46

	Page
Motion to protest Statement by Palmer and Bonnachi	46
Motion to broadcast over Station KALL	46
Motion on financial contributions to other organizations	46
Motion to send congratulations to California I.P.P.	46
Report of Balint Defense Committee	46
Statement on Deportations	47
Statement on Alex Balint	48
Action on Balint Case	49
Report and Action on Ladies Auxiliary	49
Action on Allied Industries Council	52
Action on Job Evaluation Committee	52
Motion to pay $70.00 to Casting Division	52
Report by Al Skinner	52

International Union of Mine, Mill & Smelter Workers—CIO

Minutes

International Executive Board

23 East First South Street — Salt Lake City, Utah

Monday
February 16, 1948

All sessions on Monday and Tuesday, February 16th and 17th were devoted to a meeting of the National Wage Policy Committee of the International Union. The following were official delegates to the meeting:

Mining, Smelting and Refining

Lou Cochran	Local 25
John McLeod	1
J. T. Vincent	109

Verne Reese	392
C. D. Smothermon	415
David Velasquez	616

Brass

John Cartenuti	423
John L. O'Shea	445
James Corriveau	623
Stanley Wenham (substituting for Ernest Gunsalus)	593

Casting

Moe Mazer	701
William Jackson	768
Joe Chick	715
Pete Zvara	Regional Director

International Executive Board

John Clark, President
Reid Robinson, Vice-President
Wesley J. Madill, Vice-President
Maurice E. Travis, Secretary-Treasurer
William Mason, District No. 1
Orville Larson, District No. 2
Jesse Van Camp, District No. 3
Leonard Douglas, District No. 4
Charles Wilson, District No. 5
Al Pezzati, District No. 6
Chase Powers, District No. 7
Robert Carlin, District No. 8
Ken. Eckert, Casting Division

Also in attendance were the following members:

Edward F. Parker	Local	700
Adam Squeglia		700
Charles Cole		625
Max Baker		331
Ross O'Neil		347

Howard Goddard, Coordinator—Potash Council
Howard Lee, Coordinator—Coeur d'Alene Council
Irving Dichter, Coordinator—Phelps Dodge Council
Morris Wright, Editor, "The Union"
Harold Sanderson, Assistant Research Director
Graham Dolan, Educational Director
A. C. Skinner, Director, Political Action
Herman Clott, Legislative Director
Nathan Witt, International Legal Counsel

Page 2.

President Clark opened the meeting by welcoming all delegates and visitors to the 1948 National Wage Policy Committee sessions. He reported that two delegates, Brother Cole and Jackson, had been insulted by the management of the Newhouse Hotel who refused to permit these two delegates the use of the elevator service, and appointed a Committee consisting of Brothers Travis, Madill and Robinson to meet with the management on the question of their Jim Crow policy. Brother Clerk stated that if the management did not reverse their position, all future meetings would be held elsewhere and all officers and delegates would check out of the hotel.

Brother Clark stressed the need for a uniform wage and contract policy on the main issues in our coming negotiations, stating that this would be critical year for all unions, and only a unified membership would be able to withstand the continuing attacks on trade unions.

Reports of Industry Conferences

Brother Al Pezzati, Coordinator of the Brass Council reported that the same situation prevails in the brass industry as in the others, that brass companies have been

making their highest profits in history, while wages are low in terms of real earning for the brass workers. He reported briefly on the contract demands adopted by the recent Brass Conference, stating that they were substantially the same as those adopted by the other conferences. He stated that the minutes of the Brass Conference would be turned over to the proper committees as an indication of what was being requested by the brass locals in determining national wage and contract policy.

Brother Moe Mazer reported for the Casting Conference and enumerated some of the demands suggested by the Casting locals.

Brother Orville Larson reported for the Mining, Smelting and Refining Council and stated that the demands of this section of our industry were in line with those of the other two conferences. He stated that several sections, such as the duration of contracts, had been referred to the members of the National Wage Policy Committee on open recommendation.

President Clark then appointed the following two committees:

Wage and Contract Committee
V. B. Reese
Lou Cochran
H. Mazer
J. O'Shea
J. Cartenuti

Assisted by Brothers Larson, Carlin, Mason, Pezzati, Lee and Sanderson

General Strategy Committee
J. Corriveau
D. Valesquez
C. D. Smothermon
J. T. Vincent
A. Squeglia

Assisted by Brothers Madill, Travis, Douglas, Van Camp, Powers, Eckert, Goddard and Dichter

Following the appointment of committees, Brother Robinson reported on the meeting with the management of the Newhouse Hotel, stating that the Hotel was arrogant in its Jim Crow attitude toward Negroes. Brother Robinson made the following motion:

* * *That all future meetings of the National Wage Policy Committee and the Executive Board be held in the Union Headquarters, that all Delegates and Officers and Staff be advised immediately to seek housing elsewhere, and that this matter be given the most wide spread publicity. Motion seconded by Brother Mazer. Carried unanimously.

Meeting adjourned until the next day, with committee meetings scheduled for that afternoon.

Page 3.

Tuesday February 17, 1948

President Clark called the meeting to order at 10:15 a. m. and called the roll of delegates and officers. All were present.

Brother Robinson then read the following letter which he proposed be sent to Prime Minister MacKenzie King, in Canada:

Honorable MacKenzie King
Prime Minister of Canada
Parliament Building
Ottawa, Ontario, Canada

Honorable Sir:

Members of the International Union of Mine, Mill and Smelting Workers have read with surprise the recent press reports that you are considering the proposal that Parliament bar from Canada certain officers and representatives of unions which have Canadian memberships.

We wish to point out the following pertinent facts which apparently have been overlooked by those who propose such novel legislation:—

1. Our local unions in Canada have a legally recognized status pursuant to federal law and administrative action. This legal status recognizes, in effect, the structure of most unions in Canada as affiliates of international unions with headquarters in the United States. According to custom and precedent, officers and representatives of international unions have moved across the United States-Canadian boundaries freely. As duly and legally selected bargaining representatives of Canadian working people, they have a duty, as well as a right, to travel across the border in order to serve their members.

2. The proposal followed by only a few days the publication in the Financial Post of an editorial calling for such action. It is hardly fitting that the Government of

Canada comply with the obvious anti-union designs of an employers' publication.

3. The well known and well exposed employer device of crying "communists" at every trade union leader who serves the interests of his members hardly deserves the support of the federal government of the great Dominion of Canada.

4. The present economic policy of the Canadian Government is based upon the ability of Canada to export gold to the United States. In the interest of higher gold production the Dominion Government has adopted a plan of subsidy payment to gold companies modeled after a plan which was in effect in the United States during the war, covering the entire non-ferrous metals industry. This is a plan which was initiated and presented to the U. S. Government by the International Union of Mine, Mill and Smelter Workers. Our Union was highly praised by the U. S. Government for its contribution to war production.

5. The objective of our Union in our present organizing drive in the Canadian gold fields is to improve the remuneration and working conditions of Canadian gold miners. To the extent that we are successful in this effort, more miners will be attracted to the gold industry; the resulting increase in production will aid the Government in administration of their foreign trade policy. It is, therefore, contrary to the interests of the Canadian Government to place obstacles in the way of this Union's efforts on behalf of the men who mine gold.

6. The primary reason why most North American unions cross the U. S.—Canadian line is that the major

corporations in their industries operate in both countries. Until there is a proposal to bar representatives of business from entering Canada, it is manifestly unfair to exclude the representatives of trade unions.

We therefore respectfully urge that the right of trade union representatives to function in Canada be continued as in the past in the interests of the working people and the governments of both countries.

Very truly yours,
(S.) JOHN CLARK,
President,
Vice-President,
(S.) REID ROBINSON,
(S.) ROBERT H. CARLIN,
Board Member and Member of the Ontario Provincial Parliament.

Motion by Vice-Pres. Robinson, seconded by Brother Mazer, to send this letter to Prime Minister Mackenzie King and to all Canadian Locals, calling upon them to give this letter widest circulation. Motion carried.

Brother Robinson then read the following letter which he proposed be sent to the Newhouse Hotel, the press and all local unions, CIO, AFL, and Railroad Brotherhood in the vicinity, and to all Salt Lake City hotels:

Mr. J. Holman Waters
Newhouse Hotel
Salt Lake City, Utah

Dear Sir:

As you know, all representatives of the International Union of Mine, Mill and Smelter Workers who were reg-

istered at your hotel this morning checked out and we canceled all use of your conference rooms and meeting halls following your refusal to reverse your policy of denying service to our Negro members.

We are calling upon all labor unions and other liberal organizations not to use the facilities of your hotel or any other hotel which discriminates on the basis of color, national origin or race.

The principle of equal rights for all was one of the basic tenets upon which this nation was founded and which has contributed to its development as one of the world's great democracies. Every violation of equal rights tears at the fabric of the American way of life.

We recall that many of the pioneers who broke the ground and built the cities of the great West had fled persecution which they regarded as a carryover from the intelerance and tyranny of other lands.

We recall also the sacrifices of all Americans to win a War of survival against fascism, a system built upon the repulsive theories of Adolph Hitler concerning "superior" and "inferior" peoples.

Every act of discrimination in our country detracts from the meaning of our victory over Hitler and Tojo.

We are not impressed by the argument that all major hotels in Salt Lake City discriminate against Negroes. Experience in other cities has proven that a courageous stand by one leading hotel can break a city-wide jim crow conspiracy. We call upon the Newhouse to take this

step as a contribution to democracy in Salt Lake City, the State of Utah and the United States of America.

Yours truly,
(S.) JOHN CLARK,
President.

Motion by Vice-President Robinson, Seconded by Brother Dichter, That Such a Letter Be Sent to the Newhouse Hotel and All Other Salt Lake City Hotels, the Press, and all Unions in This Area.

Motion Carried.

Reports of Committees

Brother Travis reported for the General Strategy Committee and proposed the following program to the delegates:

General Strategy

Broadening the Bargaining Basis

Since the International Union's plan for coordination of bargaining was adopted at the 1946 convention, great progress has been made in the establishment of company and industry bargaining councils. The 1947 Program of the National Wage Policy Committee called for further broadening of the bargaining basis by the establishment of such company-wide councils as Anaconda, Kennecott, U. S. Smelting and Refining, and Combined Metals.

The National Wage Policy Committee now takes cognizance of the fact that during the course of the last year there have been formed a Combined Metals Council, an

Iron Ore Council, a U. S. Smelting and Refining Council, a Kennecott Council, and that an Anaconda Council is now in the process of formation. Your Committee believes that this is a healthy development which will provide more effective bargaining for the workers employed by these companies. Your Committee recommends that whether we bargain for workers in more than one plant of a company that some type of coordinated bargaining be worked out, and that where the conditions are appropriate and the number of plants or mines of a company be numerous enough to warrant it, that bargaining councils be formed. specifically, we suggest that steps be taken to establish a National Lead Company council. We suggest also that the International Union endeavor to restore the Zinc Council to its former strength and ability to function prior to its disruption by secessionists.

Your Committee must point out what it considers a large gap in the bargaining structure of the International Union which exists because of the failure to carry out that part of the International's Program calling for coordination of bargaining among the locals of the Allied Industry sections of our Union. Coordination among plants of the chemical industry, for instance, the brick and clay industry, the cement industry, the lime industry, the explosives industry has not been achieved. Your Committee recommends that the International Executive Board immediately assign a coordinator who will have the responsibility of attaining maximum coordination of bargaining among the plants in these Allied Industry sections of our Union.

Coordination

The National Wage Policy Committee acknowledges at this time that in spite of some shortcoming during

negotiations of last year that a remarkable degree of coordination charactedized the negotiations. Wherever this coordination was fully developed, the record shows that better contract settlements were secured. It remains now for the National Wage Policy Committee to endeavor in every way to fully perfect its program of coordination.

Your Committee proposes that between its meetings responsibility for overall coordination be maintained in the hands of the National Officers, and that this be implemented by assigning the members of the National Wage Policy Committee to assist the Executive Board members and the national officers in their respective areas.

The National Wage Policy Committee cannot be in session all the time, but wherever and whenever an important issue arises, the Committee should be called into meeting to act on it. In order that there be no break in the policy between meetings, all the locals and bargaining groups should acquaint themselves with the program of the National Wage Policy Committee and not recommend the signing of any contract which departs from that program.

It is suggested that in the event of any major policy change being necessitated because of the general trend of bargaining, or any other factors, the Committee will be called into session.

It was also pointed out that the members of the National Wage Policy Committee should accept responsibility in their respective areas for seeing that the program is carried out. This might mean that from time to time individual members would, with the approval of the

National Officers, be assigned the responsibility of assisting in negotiations and coordination in their areas.

Contract Approval

The National Wage Policy Committee proposes that no contract shall be concluded without prior submission to the local union or unions involved and then to the District Executive Board Member for approval.

It is also proposed that local unions or bargaining groups shall not effect contract settlements nor go on strike nor return to work after strike without approval of the National Wage Policy Committee or the National Officers acting between meetings of the National Wage Policy Committee.

With the purpose of emphasizing the necessity for conforming to sound organizational procedure in the bargaining processes, particularly, the final approval and signing of agreements, your Committee hereinafter quotes the constitutional amendment on this subject which was recently approved by our membership by referendum:

"Amendment No. 2—Article 7 is amended to add thereto as Section 17 the following: 'The International Executive Board shall approve or disapprove all contracts submitted to it pursuant to Article II, Section 3, of this Constitution, and no such contract shall be final and binding on the International unless so approved.'"

The foregoing constitutional amendment was proposed and adopted in order to protect our membership against the shares which the Taft-Hartley law encumbers collective bargaining. Your Committee feels that this matter

is so important the life a local union may be at stake should it go on strike or sign an agreement without prior consultation with the National Wage Policy Committee The Taft-Hartley law raises so many complicated questions and presents so many traps to aid the employer in its attempts to destroy our Union that many habits of loose coordination must be overcome.

Strategy in Negotiations

The basic strategy which should guide every bargaining group calls for the following procedure:

1) Contract termination dates among the plants or mines of a single company or within a section of our Union should be uniform. The termination date in the mining, smelting and refining section is June 30th; in the Casting Division, it is May 1st; in the brass fabrication section, it is June 30th.

2) The progress of bargaining within each bargaining group should be parallel so that the maximum bargaining strength of our locals may be exerted simultaneously.

3) Major demands in each bargaining group should be as uniform as possible.

4) Coordination among the various bargaining groups such as between Kennecott Council and the AS&R Council, or the Anaconda Council and the other nonferrous councils should be developed on an almost day to day basis so that every section of our Union may be fully informed as to the progress of bargaining in other sections.

5) Council coordinators should have the responsibility of keeping their component Council locals fully informed as to bargaining developments.

This year, the Taft-Hartley law raises new problems of bargaining procedure. As a precaution against the required steps being overlooked, your National Wage Policy Committee hereinafter outlines some of the more important steps:

a) Notice of intention to negotiate for contract renewal or for wages in the case of an interim wage reopening clause must be given the company at least sixty days prior to the date of contract expiration or the intended date of wage reopening. In the event the existing contract confines the period of notice to less than sixty days, an additional notice must be sent to the company to conform to the contract provisions.

b) Within thirty days from the date the sixty day notice is given, a notice of dispute (unless there has been an agreement in the meantime) must be sent to the federal mediation service and to any state mediation agency.

c) Should the company and the union agree on a contract extension while negotiations are in progress it must be kept in mind that if the contract contains a no-strike clause, this will prevent the union from striking during any such extension, and further, it must be kept in mind that such an extension will require that additional notices must be given of sixty days to terminate the extended contract and within thirty days following the second sixty day notice, the existence of a dispute must be again conveyed to the federal mediation service and any state

mediation agency. (In the event of an informal extension by oral agreement only, the second set of notices need not be sent.)

d) No involuntary checkoff will be legal after June 30, 1947. It will be necessary to sign all members on a voluntary irrevocable checkoff authorization. The form which the International Wage Policy Committee recommends to all locals is attached hereto. In order that there be no lag in the collection of dues at the time of contract expiration, it is extremely important that local unions begin signing workers on checkoff authorization from three to four months prior to the date the contract expires, depending upon the size of the unit. Inasmuch as any checkoff provision in an agreement is a subject of collective bargaining, the company should be approached well in advance and agreement secured on the language in the authorization form. If this is not done, the union may go to the trouble of signing all the workers up and find that later the employer refuses to agree to the checkoff form. The checkoff forms should be dated as of the day they are signed by the workers. However, in order to avoid questions, efforts should be made to see that authorizations should not be signed more than four months prior to the date they are to be put into use.

e) Your Committee again wishes to emphasize that no strike action should be undertaken without prior consultation with the National Wage Policy Committee and the Legal Department of the International Union. Failure to comply with this may open the union to injunctions, damage suits and other severe penalties.

Local Union Action

As a general policy, the National Wage Policy Committee shall not effect a contract settlement in any industry or instruct a local or bargaining group to return to work after a strike until it has consulted the local and the bargaining group involved and has satisfied itself that the majority of the members concerned desire to accept the proposed settlement or return to work.

***Motion by Secretary-Treasurer Travis, Seconded by Brother Velasquez, to Adopt the Foregoing General Strategy Report. Motion Carried.

The report of the Wage and Contract Policy Committee was given by Brother Sanderson. Following are the proposals of the committee and action taken thereon: (The entire program of NWPC will be submitted separately.)

1. Wages—a general wage increase of 30 cents per hour.

***Motion by Board Member Eckert, Seconded by Vice President Madill, to Adopt. Motion Carried.

2. Holidays

a. In addition to the six paid holidays that were generally established in most sections of our jurisdiction in 1947, the National Wage Policy Committee recommends that we demand an additional paid holiday and that be Election Day.

b. Remove all qualifications limiting the eligibility of employees to receive holiday pay.

c. Holiday pay should be based on the average daily earnings during the previous pay period.

d. Triple time to be paid for holidays worked.

e. To employees whose holiday falls within a vacation period, an extra day's pay should be granted.

***Motion by Secretary Treasurer Travis, Seconded by Brother Jackson, That We Demand Six Paid Holidays Plus Election Day and the Removal of All Qualifications on Holidays. Motion Carried.

3. Health and Welfare Plant—based on 4 per cent of gross pay roll contribution by employer.

***Motion by Brother Madill, Seconded by Brother O'Shea, to Adopt. Motion Carried.

4. Vacations—one week's vacation for one year's service; two weeks for two years; and 3 weeks for ten years.

***Motion by Brother Smothermon, Seconded by Brother Douglas, to Accept. Motion Carried.

5. Severance Pay—(MSR language)

***Motion by Brother Mazer, Seconded by Brother Cochran, to Adopt. Motion Carried.

6. Anti-Discrimination—local unions should demand that their contract provide that there shall be no discrimination because of race, creed, color, sex, political belief, union affiliation or activity.

***Motion by Brother Smothermon, Seconded by Brother Zvara, to Adopt. Motion Carried.

7. Pension Plan—clause to be drawn up by Mr. Segal's office.

***Motion by Brother Madill, Seconded by Brother Douglas, to Adopt in Principle. Motion Carried.

8. Recommendations for contract, piece work, and incentive systems.

The National Wage Policy Committee recommended four (4) general principles to be used to guide us in our negotiations where contract or incentive systems are in effect.

***Motion by Brother Eckert, Seconded by Brother Corriveau, to Adopt. Motion Carried.

9. No-Strike Clause—where we have a no-strike clause in the contract, an addition clause should be negotiated stipulation that the employer will not resort to the Courts in the event of any violation of the contract but will use the arbitration machinery of the agreement as his remedy. In the alternate where an employer will not agree to this latter clause, we should insist on the elimination of the no-strike clause.

***Motion by Brother Mazer, Seconded by Brother Smothermon, to Adopt. Motion Carried.

10. Separability—A clause should be negotiated providing for the continuance of the agreement in the event that any section should be invalidated by reason of federal or state laws.

***Motion by Brother Travis, Seconded by Brother Larson, to Adopt. Motion Carried.

11. Term of Contract—this was left indefinite to be determined on the basis of our experience in negotiations. All agreements should provide for a wage reopener during the life of the agreement.

In addition, it is recommended that arbitration clauses calling for the Department of Labor or the U. S. Conciliation Service to supply arbitrators should be eliminated and substituted with provisions calling for independent arbitration service.

***Motion by Brother Dichter, Seconded by Brother Mazer, to Adopt in Principle. Motion Carried.

Brother Sanderson stated that the above points were the basic demands suggested by the Committee, and that in addition there would be prepared the proper wording for sick leave, portal to portal, shift differentials, furnishing and replacing of tools, and the question of not using the Federal Mediation Service. The Committee is also recommending to the Executive Board that a Job Evaluation Committee be set up from the mining, smelting and refining sections of our union to study the entire question of job evaluation.

***Motion by Board Member Mason, Seconded by Board Member Eckert, That Other Demands be Turned Over to Local Negotiating Committees to Get As Many in Effect As Possible. Motion Carried.

***Motion by Brother Mazer, Seconded by Brother Corriveau, That the Executive Board Set Up A Job Eva-

luation Committee for the Mining, Smelting and Refining Section. Motion Carried.

Brother Clark then read the following wires from Locals 423, in Torrington, Connecticut, and Local 445, Ansonia, Connecticut:

CIO Wage Conference
Newhouse Hotel
Salt Lake City, Utah

Resolution proposed at Bridgeport, Connecticut wage conference adopted by Local 423 at regular meeting February 15th. Urge complete unity and adoption of program at Utah conference.

(S.) WINSLOW LISNEWSKI,
President, Local 423.

Jack Clark, President,
National Wage Policy Committee,
Mine, Mill and Smelter Workers—CIO,
c/o Newhouse Hotel,
Salt Lake City, Utah.

Dear Sir and Brother:

We are sending to the National Wage Policy Conference four staunch union men who truly represent the rank and file of District six—Corriveau of Bridgeport, Cartenuti of Torrington, Gunsalus of Buffalo, and our own fighting president, O'Shea, of Local 445, Ansonia, Connecticut. They are led this year by our newly elected Board Member, Al Pezzati, who needs no introduction as a leader in our organization. The Executive Board and the union members of Local 445, Ansonia, wish to convey

their desire for a harmonious meeting with results that will again put our union in the fore in gains for the membership. Yours fraternally.

(S.) EXECUTIVE BOARD,
Local 445.

***Motion by Vice President Madill, Seconded by Board Member Pezzati, That As A Matter of Policy in Every Instance All Economic Benefits Derived As A Result of Negotiations in Any Section of Our Industry Apply Equally to Salaried Employed Where Said Salaried Employees Are Members of Our Union, Except in Cases Where Conditions Are Superior, in Which Case Said Conditions Shall Remain in Effect. Motion Carried.

Educational Director Dolan presented a brief picture of his recent classes in the South and East and in Canada, and stressed the need for bringing to all local unions the necessity to fight against the Taft-Hartley Act.

Brother Robinson presented the following statement for action:

It was hardly surprising—in fact, it was almost funny—when Senator Taft, one of the sponsors of the Taft-Hartley slave labor law, repeated in a political campaign speech a silly story of the Canadian gold mine owners to the effect that union organizers from America in the Canadian gold fields were refugees from the Taft-Hartley law.

However, this act lost its comedy aspects when it was repeated by an officer of a Canadian labor union. We refer to a statement by C. H. Millard, national director of the United Steelworkers in Canada, supporting one of labor's principal with these words:

"Senator Taft probably is hitting pretty close to the mark in naming mining unions . . . . certain well-known Communists . . . have decided to come to Canada rather than sign such a declaration." Reference was to the "non-communist" affidavits of the Taft-Hartley Act.

The following facts expose Millard's statement as malicious nonsense:

This charge of "Communists" escaping to Canada first appeared in statements by gold mine operators, quoted in newspapers of Northern Ontario mining communities where IUMM&SW is carrying on an organizating drive. The charge was quickly dropped when it became a laughing-stock of the mining communities.

There could be no motive for a sane labor leader, Communist or otherwise, to leave the United States for Canada because of the Taft-Hartley act. The leaders of our union are not in violation of this law; but even if they were they could hardly expect to escape the consequences by crossing the Canadian border.

Millard's stupid remarks are a disservice to the most prominent victim of Taft-Hartley prosecution to date—Philip Murray, president of Millard's own union, the United Steelworkers. Murray is now under indictment by the U. S. Government for his statement of last August, published in The CIO News, supporting the candidacy of a man who is now a member of Congress Perhaps in tomorrow's newspapers we may read that the bungling Millard has either condemned Murray as a Communist or has offered him underground haven beyond the border.

Cleve Kidd, research director of Millard's own United Steelworkers of Canada, reacted to Senator Taft's speech as follows: "Senator Taft is giving aid to the proponents of a Canadian Taft-Hartley law." Logically, Kidd could not react otherwise to Millard's echoing of Taft.

We have that Millard, who, like Senator Taft, is a candidate for public office, will not continue to follow Taft's lead in his campaign statements.

Like the United Steelworkers, United Mine Workers, United Electrical, Radio & Machine Workers and International Typographical Union, our International Union has chosen to stand and fight for the rights of labor, for repeal of the Taft-Hartley Act. This is not only our democratic right—it is our duty as representatives of organized labor who see Taft-Hartley as a page from Hitler's blueprint for Nazism. Any so-called labor leaders who use the NAM-manufactured formulas of Taft-Hartley are working toward destruction of free labor in the United States and Canada.

**Motion by Vice President Robinson, Seconded by Board Member Carlin, to Send the Above Letter to the Press and All Local Unions.

Amendment by Board Member Pezzati, Seconded by Board Member Larson, That the Statement be Released to Canadian Press and to Canadian Locals Immediately. Amendment Carried.

Vote on Motion As Amended. Motion Carried.

President Clark thanked the delegates and the Executive Board for their cooperation in hammering out a

sound wage and contract program for the coming year and urged them to go back into their locals and rally the members for a real fight against the employers and against Taft-Hartley.

Meeting adjourned at 4:30 p. m.

Wednesday February 18, 1948 Morning Session

Meeting called to order by President Clark at 10:30 a. m. All officers and board members in attendance. Brothers Sanderson, Wright, Dolan, Clott, Skinner, Witt, Goddard, Dichter, Lee, Smothermon and Ashby also were present.

President Clark requested Secretary-Treasurer Travis to read the following wire from the Upper Michigan locals.

> International Union of Mine, Mill — Smelter Workers—CIO
> Executive Board—John Clark, President; Maurice E. Travis, Secretary
> Newhouse Hotel
> Salt Lake City, Utah

We, the undersigned Michigan locals, will not recognize Jesse Van Camp as District 3 Board Member, and request that he not be sworn into office for reasons contained in Local 584 testimony and material of December 4th and January 7th of which you have received copies. We request International Executive Board carefully study all material on this matter and take action under authority vested in Article 7, Section 1 and 4 of constitution to call canvassing committee to review matter as committee superceded powers granted them by Article 4,

Section 14. Some members of canvassing committee have stated committee should reconvene. Impossible for this matter to be deferred until next convention as canvassing committee's disqualification of Local 584 ballots vote of 5 to 4 was a violation of constitution and duty of International Executive Board is to enforce constitution between conventions. We have faith that International Executive Board will ask compliance with constitution on part of all subordinate bodies including canvassing committee so that rank and file mandate will be protected and their confidence in constitution and International be restored.

s/ Calumet and Hecla Local Copper Workers 584, John Sitar, President, Leonard Wasberg, Secretary—Isle Royale Copper Workers Local 513. James Miller, President—United Copper Workers Local 494, Edward Charles, President—Atlas Powder Workers Local 825, Elmer Lairmont, President—Quincy Copper Workers Local 523, Omar Versaille, President—Copper Range Railroad Workers Local 615, Bernard Gravier, President—Schoolcraft Lime and Stone Workers Local 377, Don Arrowood, President.

Brother Travis stated that this question had also been raised at the previous Board meeting in November, at which time it was pointed out that the International constitution provided that the International officers take office the first of the year and that they be installed as soon as possible thereafter, and that in order to save expenses no Board meeting was called immediately after the first of the year for the express purpose of installing the new officers. He stated that this was the reason the new officers were not being installed until this meeting.

After discussion by the Board during which it was brought out that neither the International Executive Board nor any other group within the Union can negate the decisions of the Canvassing Committee except the following convention, and that this Board had no alternative except to accept the report of the last Canvassing Committee, unless and until such time as the International Union convention might decide otherwise, the following motion was made:

***Motion by Board Member Powers, Seconded by Board Member Douglas, That the International Secretary-Treasurer be Instructed to Write Letters to All of the Locals Signing the Telegram Advising Them That This Board Is Without Power to Act on An Appeal Protesting the Certified Decision of Any Canvassing Committee, Since This Matter Is Provided For In Article 4, Section 15, of the International Constitution Which States That the Results of the Canvassing Committee As Certified Are Conclusive And That the Only Appeal Is to the Ensuing Convention. Motion Carried.

The next order of business was the installation of officers. Brother Travis installed Brother John Clark, according to the ritual of the International Union. President Clark then installed the rest of the officers and Board members, in accordance with the ritual.

The Board then discussed the question of the failure on the part of some staff members to send Board members full reports of activities, etc. It was agreed that all such International Representatives be notified of their duties to the Board member of their district.

***Motion by Brother Eckert, Seconded by Brother Carlin, That the National Officers Notify Any Staff Members Who are Not Now Clearing Their Activities With Their Respective Board Member to Do So and That National Officers Plan A Trip to the Upper Michigan Locals Involved in the Protest of the Canvassing Committee's Decision. Motion Carried.

It was proposed that all Board meetings for the balance of the week begin at 9 o'clock instead of 10 because of the numerous items still on the agenda to be acted upon. The Board members agreed to this.

Brother Madill proposed that the members of the Executive Board meet with a group of members of the Utah and Nevada locals in the evening at the union hall.

President Clark presented a brief report on his recent trips to various International Union conferences and on the last CIO Executive Board meeting. He stated that the December meeting of the British Columbia District Council was an inspiring one and showed that the locals in this section of our Union were solid behind a fighting program to better their conditions. He stated that the recent political action meetings in our Idaho locals were excellent and showed a real desire on the part of a great number of our members there to participate in a campaign to elect progressive candidates. The Montana locals also have formed a political action committee and are beginning to function. He stated that a good Montana Negotiation Committee meeting had been held in preparation for the coming Anaconda negotiations. Brother Clark said that the recent meeting of the Canadian Wage Policy Committee in Timmins which he attended showed that our Canadian membership was alert to the enormous job

yet to be done in organizing the gold industry and in securing better wages and conditions for the workers in that area. With regard to the recent CIO Executive Board meeting, Brother Clark stated that in his opinion the position he took in abstaining from voting on the anti-Wallace Resolution was correct because the Resolution contained also a number of positive features, calling for good legislation, etc., with which he was in favor, and that he had felt he had no authority to commit our Union to any position on the Wallace question at the CIO Board meeting before our own membership and Board had made a decision on it. He stated that the reaction as expressed to him since the CIO Board meeting by the rank and file members indicated that he had taken a correct stand and that our membership was highly critical of the Resolution because it permitted of no independent thinking on such an important matter. He stated that many locals had already registered their protest against the inflexible stand taken by the National CIO on the Wallace question and that numerous locals had sent in letters and resolutions to the national office urging that our Union indorse Wallace. Brother Clark reported his stand on the Marshall Plan and aid to Europe which he took at the CIO Board meeting, to the effect that he was opposed to any American money being sent to strengthen the hands of the fascists in Greece and China. He reported that the CIO Board was unanimous in its indorsement of several legislative matters and aid to the Chicago Typographical Union.

Brother Clark next reported on the meeting held with President Murray, Board Member Eckert and NAW President Reuther concerning the raiding now being carried on by NAW against some of our Casting locals. Brother Clark reported that President Murray had stated that he

was unequivocally opposed to such raiding, that this jurisdiction had been given to Mine-Mill by National CIO some years ago and ordered Reuther to turn back any locals taken by UAW from Mine-Mill. Following this meeting, another meeting was arranged between Reuther, Secretary of UAW Mazey, Brother Eckert and Brother Clark, which could not be held because of travel conditions. However, in view of ensuing events, Brother Clark stated there was little doubt that Reuther had embarked on an all-out raiding program against our union and condemned such an anti-labor stand, since the workers involved would suffer most of all in the confusion because the companies would take full advantage of it. He stated that a meeting is to be held with CIO Vice-President Haywood and Reuther on this matter and that the Board members would be kept informed of developments.

Brother Clark stated that he had been asked by the Montana Joint Negotiating Committee to be in Butte a couple of days before March 15th, the opening date of the Anaconda negotiations. A political action meeting has also ben scheduled for that time for the Montana locals. Brother Clark reported briefly on the recent Casting and Brass Conferences which he attended.

***Motion by Brother Powers, Seconded by Brother Larson, That This Executive Board Support the Position Taken by President Clark At the CIO Executive Board Meeting in Abstaining From Voting on the Controversial Wallace Resolution. Motion Carried.

***Motion by Vice-President Robinson, Seconded by Board Member Larson, That the Matter of District Union No. 2 Be A Point on the Agenda At 2 P. M. the Fol-

lowing Afternoon and That President George Wilde of District Union No. 2 Be Advised to Be Present. Motion Carried.

President Clark appointed a permanent Appeals Committee for the balance of the term of offices, consisting of Board Members Wilson, Larson and Mason.

Brother Howard Lee, assigned to the Coeur d'Alene area, reported on difficulties locals in that area had been having on arbitration cases, and suggested that it be the policy of our Union not to use federal mediation and conciliation service, because of the large fees involved and also because all such panels were already beginning to reflect Taft-Hartley thinking. He suggested that the American Arbitration Association would be better for the locals, and that if it were not available, some other arrangement should be made.

Brother Dichter suggested that before any arbitration takes place a clear understanding with arbitrators be reached as to fees.

Brother Travis stated that the National Wage Policy Committee had agreed that the agencies of the federal government would no longer be used.

Brother Witt gave a brief history of the American Arbitration Association and agreed that the federal agencies should not be used. On the question of alternatives, he suggested that his office should get out a memo for use by our local unions. He cautioned the Board members to make sure that in renewing agreements, all clauses calling for arbitration by the federal government agencies are removed. He stated that in his opinion locals would

be wise to agree on a specific person for the duration of the contract, and that at the end of that period, if he did not prove to be fair, he could be replaced. He pointed out the three advantages to this plan: 1) The cost question could easily be worked out satisfactory before beginning arbitration; 2) The union would be able to participate fully in the selection of such an arbitrator; 3) In most cases, the union would get at least half of the cases settled fairly under such an arrangement. In addition, he stated that some state mediation boards were all right, and that this matter should be checked into carefully on a local basis before making a decision on it. Where the local agencies were good, he advised using them in preference to the American Arbitration Association. Brother Larson reported that the Phelps Dodge local in his area had had a permanent arbitrator for some time and that the chances were that this was about as good an arrngement as any. He suggested that the International Union office compile a file of arbitration cases for the guidance of the rest of the locals. Brother Clark requested that on all arbitration cases, a copy of the findings be sent to the International Office and to the Board member involved.

President Clark reported that Brother Alex Balint, Casting Regional Director in Cleveland, was being held for deportation by the Immigration Department Brother Dichter gave the Board the background to the case, stating that Brother Balint had repeatedly applied for citizenship and had been denied, and that his arrest was part of an entire program to try to terrorize progressive labor leaders and quash the American trade union movement.

Board Member Eckert suggested that Brother Ray Dennis be designated International Union representative at the CIO Civil Rights meeting in Cleveland, and that a wire be sent to the meeting urging them to take action protesting arrest and denial of democratic rights to Brother Balint and others. After a full discussion of the methods which might be used to raise money and popularize the case of Brother Balint, the following motion was made:

***Motion by Brother Mason, Seconded by Brother Eckert, That A Three-Man Committee Be Set Up to Be Instructed to Bring Back Recommendations to This Meeting on the Balint Defense Case. Motion Carried.

President Clark appointed Brothers Dichter, Eckert and Pezzati.

***Motion by Brother Eckert, Seconded by Brother Powers, That the International Union Ask Brother Ray Dennis of Cleveland, Local 735, to Represent Us At Present Civil Rights Meeting of CIO In Cleveland, And That the CIO Civil Rights Meeting Be Wired to Register Strong Protest Against the Treatment of Brother Balint And Other Union Members, Santo, Doyle And Smith. Motion Carried.

President Clark read the following wire from Brother Lee Pressman who was to have spoken to a mass meeting in Salt Lake City:

John Clark
Mine, Mill & Smelter Workers Union
23 East First South Street
Salt Lake City, Utah

Participation in criminal proceedings defending Phil Murray and C. I. O. in Taft-Hartley suit unforunately requires my presence in Washington, D. C. Will therefore not be able to attend meeting in Salt Lake City. Extremely regretful but would like opportunity on future date..

(S.) LEE PRESSMAN.

***Motion by Secretary Treasurer Travis, Seconded by Board Member Mason, That Scheduled Meeting Be Postponed Because of Inability of Brother Pressman to Attend. Motion Carried.

Adjournment for noon recess.

Wednesday February 18, 1949 Afternoon Session

Meeting was reconvened at 2:30 p. m. with all Board members present Secretary-Treasurer Travis presented a comprehensive report on the financial condition of the International Union and compared the expenditures in the last quarter of 1947 with the third quarter. He reported that expenses were greatly curtailed in the last quarter. There was considerable discussion by all Board members on this question.

***Motion, by Brother Eckert, Seconded by Brother Madill, That the Material Provided by Secretary Travis to the Board Members on Financies be Studied by the Board Members to the End That the Reductions Ordered by the Last Board Meeting be Effected And That the International Officers be Responsible for Discussing With Each Board Member Ways to Effect Such Reductions, and That Each Board Member Personally Attempt to Have All Delinquent Locals In Their District Pay Up

Their Back Per Capita Tax, and That the National Office Make An Effort to Effect Further Economies. Motion Carried.

***Motion by Brother Robinson, Seconded by Brother Travis, That the International Secretary Treasurer Advise All Locals Presently Delinquent That the Policy of Printing the Names of the Delinquent Locals in the Official Paper, the Union, Is to be Reestablished, And That Henceforward Each Month the Official Paper Carry the Locals Which Are Delinquent in Their Per Capita Tax. Motion Carried.

***Motion by Brother Travis, Seconded by Brother Vancamp, That the International Executive Board Exercise Its Prerogative Under Section 4, Article 15, of the International Constitution to Invoke A One Dollar Assessment on All Members In Good Standing In the Month for Which the Assessment Is Levied, April, 1948.

Discussion on the motion.

Statement by Secretary Travis:

The financial condition of the International Union over the course of the last year was first made precarious by the secession struggle in which the union became involved; and the union was able to remain solvent ony because of the aid of the various locals in building a Fighting Fund for the International. This internal struggle which existed in the early part of 1947 on to the summer and fall still has remnants and is complicated by the Taft-Hartley law which has made it possible for other International unions to raid our organization during this period and impose a much greater financial burden on the

International. For, although the International Union was able to survive the financial crisis which the secession movement and all the attendant struggle occasioned, it was in the meanwhile and ever since feeling the impact of increased costs of other material which the International puts out. The cost of supplies and every other type of operational expenditure has doubled during the period of the last year. By the time of the International Executive Board meeting held in November, 1947, the records show that the International Union has been running a deficit of approximately ten thousand dollars per month for a long period, and that although the financial crisis occasioned by the secession movement had been surmounted, the International was again confronted with financial difficulties growing out of the increasing costs of organizational and administrative expenses, costs which need immediate curtailment in order to keep the organization solvent. At that Executive Board meeting, drastic cuts were made. As a matter of fact, the staff was reduced to the point where any further reductions would have meant serious sacrifices of service to the membership. It was determined that the continuing deficit of ten thousand dollars a month must be met by a budget, and such a budget has been formulated and put into effect.

In an effort to meet this deficit the International Union has moved its headquarters to a less desirable location. The staff has been reduced by approximately five persons. Telephone, telegraph, transportation, and organizational expenses in connection with the functioning of the staff have been reduced by from 25 to 50 percent, and every other possible economy has been put into effect in order to conserve the finances of the International Union. Further economies on any broad scale will seriously impair the functions of the organization and deprive the member-

ship of badly needed service. Because thes economies have been put into effect there is no immediate danger of insolvency. It must be kept in mind, however, that at this time, the organization is entering a period of major negotiations throughout our jurisdiction and it may be expected (as a matter of fact there are already indications) that the per capita income to the International will be substantially reduced because of strike struggles and other factors. In order to successfully carry the union through this period of negotiations and build some reserve to meet the reductions of income which would follow from any widespread strike struggle, it is necessary that the International Union call upon the membership to assist to build this reserve.

The International Executive Board anticipated this situation at the time of the national convention of our union, in St. Paul, Minnesota. Realizing then that practically every other major International Union in the country had raised per capita tax or were declaring assessments on the membership in order to meet the same increased costs of operation, the International asked the membership to increase per capita tax by ten cents per member per month. The membership indicated its unwillingness to comply with this program by rejecting the ten cents per capita increase in the referendum. Since that time, the obvious need for building a reserve to meet any contingencies that may arise in the course of the bargaining struggle this year has become more apparent and more serious.

Therefore the leadership of this International Union, its Executive Board, would be remiss in protecting the interests of the membership, unless at this time it exercised its prerogative in declaring an assessment. This is the

first assessment which the International Union has invoked since 1939. I therefore at this time urge the Executive Board to enact this motion and to call upon the membership to wholeheartedly and willingly subscribe to the assessment, and I am sure that the entire organization will be prepared to meet any possible struggle that may develop in the course of our bargaining negotiations this year.

Statement by Vice-President Robinson:

I think that we should look at this situation in its relationship to what has happened in the past. There is prevalent among some a certain complacent feeling about the financial structure of this organization, a feeling that we have always been able to meet these situations and there is no reason why now we can't do as we have done in the past. I think the feeling arises generally out of the kind of a situation we found ourselves in during the war period. During this period of approximately five years, the organization enjoyed a relatively stable income. All of the wage and contract problems were resolved through the process of governmental agencies. During this period, the checkoff and maintenance of membership was spread to every section of the organization. Under these conditions we found that it was possible under a 65—cent per capita tax to carry the current needs of the organization and to lay away a small reserve. Immediately upon the ending of the war, employers forced the unions into strike struggles and the strikes of 1946 with thousands of our members out of work for several months created a condition where the reserve was rapidly depleted. This peletion resulted from, first, loss of income because of strikes, and second, added expenses incurred during those strikes. Following this econo-

mic struggle, we found the organization faced with a secession movement which Secretary Travis referred to which completed the job of depleting the entire reserve of the International Union.

There has been no per capita tax increase in the International Union since 1941. However, since the last increase the expenditures of the organization have increased in greater proportion than the increase in membership. With a larger membership, the administrative costs of the organization increased rapidly creating a greater disparity between income and expenses. Since the last increase in per capita tax, and especially during the past two years we have seen this highly inflationary economic situation in the United States which has affected the expenses of the individual worker. As a result of this whole inflationary situation, the per capita tax was not enough to meet the daily needs of the organization, placing it in a weakened financial condition to meet the ordinary problems of an international union in wage and contract fights, to say nothing of the unusual expenditures incurred in the fight against secession. It should be pointed out here that since the last per capita tax increase in the International Union that the combined efforts of the members of the International Union throughout the organization have brought about substantial increases in the wages of all of the members. Just to cite the last two wage increases which amount on an average of 30 cents per hour, making it possible for a memebr to receive an additional $811.00 per year based on a 48-hour week, and some $624.00 per year based on a 40-hour week. These figures speak for themselves as to the benefits accruing from a strong International Union and show that the levying of an assessment at this time of one dollar will not work a hardship upon any member but

will place each individual member in a stronger position to increase his existing wage schedule through a more financially stable union. It is therefore eminently fair to all of the members of this organization that a dollar assessment be levied for the month of April, in order that we can carry on the outstanding work of this International Union.

Brother Madill suggested that a statement be drawn up, to be signed by the entire Executive Board, and sent out to all of the membership explaining why an assessment is necessary. Brother Powers suggested that in addition, each Board member should send a letter to all of his local unions.

Statement by President Clark:

Fundamentally, Secretary Travis and Vice President Robinson have expressed everything that needs to be said as far as the levying of this assessment is concerned. However, since I have been in the International Office, I have seen the decline in the finances of the International Union due to the added expenses which came about in the last difficult period. Prior to the last convention, I made an analysis of the funds, the circumstance the International was faced with, and the possible troubles that we were in for in the future. At that time, as Secretary-Treasurer of the International Union, I proposed an increase in per capita tax which was turned down by the membership. Since that time, I have consistently advocated exercising the prerogative given in the constitution to levy this assessment. I believe that the membership of our union will understand why this is necessary and will cooperate fully in its collection. The recent Mining, Smelting and Refining Conference held in Salt Lake

City during the past few days voted to recommend to this body that such an assessment be levied. I believe that an honest explanation to our membership of the difficult days ahead in negotiations and fighting Taft-Hartley will serve to rally them behind this necessary assessment. I am confident they will support it fully.

***Motion to Invoke Section 4, Article 15, of the International Constitution to Levy One Dollar Assessment on All Members In Good Standing In the Month of April, 1948 Carried Unanimously.

***Motion by Brother Madill, Seconded by Brother Eckert, That A Committee be Set Up to Draft A Policy Statement to be Signed by the Entire Board Setting Forth the Position of the Board to the Local Unions In Levying This Assessment. Carried Unanimously.

President Clark appointed Brothers Travis, Madill and Pezzati to serve on this committee.

The following local unions were declared defunct by proper Board action:

District No. 1

Local 26, Silverton, Colorado 850, Idaho Springs, Colorado

***Motion by Brother Mason, Seconded by Brother Vancamp, to Declare the Above Locals In District No. 1 Defunct. Motion Carried.

District No. 2

Local 376, Tooele, Utah 401, Sunnyside, Utah 517, Bingham Canyon, Utah 845, Bingham, Utah

***Motion by Brother Larson, Seconded by Brother Douglas, That the Above Locals In District No. 2 be Declared Defunct. Motion Carried.

District No. 3—none

District No. 4

Local 133, Cadet, Missouri 411, Blackwell, Oklahoma 859, Graniteville, Missouri 885, Pittsburg, Kansas 840, Van Buren, Arkansas

***Motion by Brother Douglas, Seconded by Brother Powers, That the Above Locals In District No. 4 be Declared Defunct. Motion Carried.

District No. 5

Local 512, Bessemer, Alabama

***Motion by Brother Wilson, Seconded by Brother Douglas, That the Above Local In District No. 5 be Declared Defunct. Motion Carried.

District No. 6

Local 548, Jersey City, New Jersey

***Motion by Brother Pezzati, Seconded by Brother Larson, That the Above Local In District No. 6 be Declared Defunct. Motion Carried.

District No. 7

Local 567, Duthie, Idaho 697, Spokane, Washington 873, Kellogg, Idaho

***Motion by Brother Powers, Seconded by Brother Larson, That the Above Locals In District No. 7 be Declared Defunct. Motion Carried.

District No. 8—none

Casting Division—none

Brother Clark announced that the meeting with the District Union 2 locals would take place at 8 p. m.

Meeting adjourned.

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Thursday February 19, 1948 Morning Session

President Clark called meeting to order at 9:15 a. m. All Board members and officers in attendance, as well as Brothers Witt, Wright, Clott, Smothermon, Goddard, Skinner, and Mrs. Verda Barnes, representative of CIO-PAC.

Mrs. Barnes reported on recent meetings in the West which she had attended and participated in as Western Field Representative for the CIO Political Action Committee for eleven Western states. She expressed appreciation at the cooperation given her and the political action program by the members and staff of Mine-Mill, stating that in many of the Western states, Mine-Mill is the

dominant union in point of membership. She pointed out the position of national CIO-PAC as expressed at the last CIO Executive Board meeting, stating that the resolution passed by the majority of the CIO Board covered several points: first, that the CIO is committed in no way at this time to any presidential candidate, and second, that they felt it was unwise to support the Third Party movement in 1948; third, that the CIO should do everything possible to put its domestic and international program into effect; fourth, that all of us should use our full strength, undivided, in an effort to elect a Congress which will support our program; fifth, that we urge our members, families and friends to increase their political activities this year; sixth, that we expect to work in unity with other groups to get out the greatest possible registration and vote. She stated that she did not know how our Board would act on the Wallace question but urged that everything possible be done on a Congressional and local level to work in harmony with all groups pledged to fight for the election of progressive congressmen and the defeat of anti-labor candidates.

Mrs. Barnes presented a brief picture of the political situation in each of the Western states and the activities of our union in building up political action work. In Washington State, she reported that two of our members, Brother Savage and Brother Olsen, were Vice-Chairman and Board member, respectively, of the State PAC. In Washington, in the last election, seats were won or lost by less than a margin of 3 percent of the vote. She also mentioned that in the Congressional District formerly represented by John Coffee and now by Tollifson, Mine-Mill has a substantial membership, and working in harmony with other groups and getting out the registration and the vote could probably remove Tollifson, even

though the AFL has announced that it will support him. Coffee has also stated that he will be a candidate for office and since the last filing date for candidates is July 14, there may be other candidates, as well, in the race. Their primary is late, September 14th, with no Senate race this year.

In Montana, on December 14, 1947, President Clark and Board Member Mason arranged a meeting of Mine-Mill locals to lay the groundwork for a state political action committee. The meeting was successful and was followed up by one on February 1st, to which also came delegates from other unions in the state. At that time, a temporary chairman, Ray Graham, was elected, and a temporary secretary, Ashly Holley, both of Mine-Mill. There has now been scheduled a meeting to establish permanent officers on March 7th. Monta a is a critical state this year because of the expected battle which progressive Senator Murray will have for re-election. In the first Congressional District, Mansfield will be a candidate for re-election and so far does not appear to have any serious opposition. In the second District, Congressman d'Ewart won by a slim vote in the last election and a real job by labor can undoubtedly unseat him this year. June 10th is the last filing date in Montana, and July 25th the primary date.

In Idaho, a state political action committee was established at meetings held in December and January. President Clark and Al Skinner attended these meetings. Brother Howard Lee of Mine-Mill was elected chairman of the state political action committee, with the secretary coming from the Woodworkers. All of the Mine-Mill unions and auxiliaries are represented on the Executive Board. Senator Dworshak is up for re-election and should

be defeated. The Farmers Union in Idaho has indicated it also would like to work with our union on this, and with all groups working together, he should not be too difficult to defeat. There are four or five possible candidates who might run against him, two of them acceptable to our CIO membership. Also on a Congressional level, in North Idaho, especially, where there is a large concentration of Mine-Mill membership, registration drives are being carried on in earnest, and the perspective for Congress is quite bright.

Utah has had a political action committee set up for some time, with Brother Ashby and Brother Keith active on the committee. The race in Utah which is attracting the greaest amount of attention is that for governor. The incumbent who is running for a third term is being opposed by six candidates in the Democratic primary and seven Republicians. They have changed the election laws in this state from a direct primary to a combination convention and primary. The first caucuses are going to be held very soon, March 8th, and it is important in the Mine-Mill membership to attend those caucuses, especially in the district where Walter Granger won by only 127 votes and will undobutedly face and equally though fight for re-election. He has an excellent voting record and deserves the vigorous support of all labor groups.

In Colorado, there is a working CIO political action committee, with Brother McKenna representing Mine-Mill on the Board. Senator Johnson has announced that he won't seek re-election; however, there are many who feel that this is merely a maneuver on his part and that he confidently expects to be drafted to run. It is quite possible that John Carroll, the Congressman from the Denver district, will be in the race for Senator this year.

Mine-Mill in Colorado has membership chiefly in the district now represented by Congresman Rockwell. If a good candidate can be found to run and the proper work done by the union it should be possible to remove him. In Leadville, where Mine-Mill membership is very strong, an excellent job was done on the city elections, with the result of a victory for mayor and two or three members of the union elected to the City Council.

In New Mexico, Brother Smothermon is the Secretary-Treasurer of the political action committee. Clinton Jencks is chairman. Many of the leaders on this Board participated in the formation of the committee. This state has established a committee, conisting of representatives of all the major labor groups, CIO, AFL, the brotherhoods and the independent unions. I think this development must have rocked the politicians of the state when more than 250 delegates showed up for this meeting. They have established this coordinating committee with ten delegates from each of the groups and are proceeding to work out plans for political operation. Both of the congressmen in New Mexico, Lusk and Fernandez, are bad and should be removed. They have the doubtful distinction of being the only Western Democratic congressmen who voted for the Taft-Hartley law, and they should be removed on that basis if no other. Senator Hatch has received the open support of Senator Chavez, which is quite a blow to us, because we had hoped that Senator Chavez would keep hands off this race. So far there is no one definite to run against Hatch, but Brother Smothermon and the others in Labor's Coordinating Committee in the state are confident that they can find a good candidate to oppose Hatch before the May 8th final filing date in New Mexico. They have an early primary, June 8th.

In Arizona, permanent officers were elected to the state political action committee in February. Brother Larson is chairman of the committee. Arizona does not have a Senate race this year, but will have one for governor. They will also have the problem of congressional re-districting this year.

In Nevada, a Labor's Joint Legislative Committee, working jointly with the AFL and the brotherhoods, has been set up, and is doing good work to develop interest in getting people out to register and vote.

In Wyoming, there will be a Senate race this year also. Robertson is running for re-election. Also there is one Congressman, Barrett, who will be up for re-election. The Mine-Mill membership in the state, working in harmony with other labor groups, feels that it will be possible to defeat Robertson, although Barrett will be more difficult.

Mrs. Barnes reported that not more than 30 percent of our membership is registered to vote at the present time and stated that this is the first and most immediate task now for all labor groups working in the 1948 elections. She also mentioned the constructive role which should be played by the auxiliaries in political action work. Mrs. Barnes stated that women must play an active role in the campaigns this year, not only in canvassing work but also in determining policy on a leadership level.

Brother Al Skinner, Political Action Director, presented the following report on his activities since his appointment:

Political Action Report

The adoption of a political action program at the November Board meeting in Chicago called for the establishment of an International Political Action Committee composed of all officers and Board members. An Executive Committee was established composed of Brothers Clark, Clott and myself. Since the November Board meeting this three-man committee has been in the process of putting this detailed program into effect.

The committee felt that organization, education and publicity on a "grass roots" level was essential for a successful campaign. In addition, we recognized the lack of elementary organization among the local unions as the greatest weakness of all previous political action work. Because of this we felt that particular attention should be given to practical organizational work inside the local unions in the early stages of the '48 campaign. Our experience in the field during the past two months has proven these conclusions to be correct. We wish to report the following:

On Publicity

1) Copies of the program were sent to all officers, Board members, organizers and local unions.

2) A letter of instructions and suggestions were sent to all organizers.

3) The first issue of the Political Action Bulletin together with sample file cards for registration purposes and a questionaire requesting the names and addresses of all local officers and stewards were sent to each local union and each organizer.

4) A mimeographed statement on the need for combining political and economic action was distributed at all wage conferences and council meetings since January 1st.

5) A special supplement on political action appeared in The Union last month.

6) We have ordered and are mailing to our entire mailing list a special booklet on prices developed by National PAC.

On Field Work

By agreement between the members of the Executive Committee and the National Officers the field work has been divided into Eastern and Western states with Herman Clott responsible for the Eastern states and Skinner for the Western states. Brother Clark has been giving leadership to political action work on an over-all basis as the International President and specifically in Idaho and Montana where he played the leading role in promoting and organizing statewide conferences because of his close relationship with the local leaders in these states.

Verda Barnes, Western Field Representative for National CIO-PAC, has played a very constructive role in the development of our Political Action Program in the State of New Mexico, Arizona, Nevada, Washington, Idaho and Montana.

Brother Clott has been unable to spend as much time in the field as I have because of necessary legislative work in Washington, the development of the Third Party issue and its effect on the policy of CIO-PAC and liaison work with other CIO unions prior to the Board meeting. In addition, at the request of International officers, he was engaged in the settlement of Court cases in Baltimore arising out of the secession fight. However, Clott was able to get into District No. 4 where he spoke at a series of meetings in the Lead Belt arranged by Board Member Douglas. Since registration is not required in the smaller communities in Misouri, this matter was not a problem. Therefore the meetings dealt with a full discussion of the political problems facing the membership in that state and in particicular the mine subsidy issue coming up again in this session of the Congress. Prior to the trip into Missouri, Clott participated in the meetings of the Casting Division Council in Chicago.

To date I have attended meetings of twenty-four locals in eight states. In most of these we held both membership meetings and leadership meetings. We organized and set up state-wide committees in Idaho, Montana, New Mexico and Arizona. In spite of the fact that considerable ground has been covered since December 1st, in reality we have just scratched the surface of the work that must be done in the Western states. I have, as yet, been unable to attend any local meetings in the Upper Michigan area of District No. 3, in District No. 4 or in the States of Colorado, Wyoming, Utah or California. We have assumed that California needed no attention from us. Brother Powers who together with several staff members have been working on the organization of a third party in California can report on the situation there.

In District No. 1, Brother Mason has been very active in the development of the Wallace campaign and helped us to organize two exceptionally well-attended state-wide meetings in the State of Montana. In District No. 2, Brother Larson organized and played the leading role in the formation of state-wide political action meetings in both New Mexico and Arizona. In addition to this he arranged for me a schedule of local meetings throughout the district and gave detailed instructions to his staff members to organize and prepare the meetings. In Utah, we have held up attempting to start Political Action work because of the internal situation.

In Illinois, Brother Van Camp, his staff, and the locals in the southern part of the state, together with the Casting Division locals in Chicago are working with the newly organized Progressive Party of Illinois. In District No. 7, together with President Clark and International Representative Howard Lee, I spent a full week in the Coeur d'Alenes attending local meetings, organizing leadership meetings and assisting in the establishment of a State PAC. In addition, I attended a meeting of the Tacoma local where we established a Political Action Committee and started registration.

What has the field work accomplished?

In almost every local union we found a dire need for political education. We went through the elementary process of sitting down in meetings with the local union officers and stewards and through discussion pointing out the fact that every major problem facing the working people today is a political problem, and that unless our trade union struggles for higher wages are combined with intense political activity we will continue to lose

around in the fight to make the pay check reach and sooner or later we will lose our unions. We found it necessary to review with local leaders and at membership meetings the experiences of the trade unions since the death of Roosevelt and the end of the war as simple and easy to understand examples of this main fact. I found out that in most local union meetings today political action is seldom discussed. In most local meetings routine business and discussion of grievances and arbitration cases against the company occupy the entire meeting. This problem of making politics an important part of the discussion in every local meeting is elementary if we are to accomplish anything in political action. Until our organizers, our local officers and our membership are convinced that political action work is a matter of life and death for the American labor movement then we cannot win political battles.

Local Organization

In meeting with most local unions we have followed a certain pattern in preparing the local union for political organization, as follows:

1) The establishment of a local PAC committee to include all officers and stewards.

2) A check-up to see whether the local union has started any registration work. Where they have not, we outline and get agreement from the local leaders to go through the necessary steps of setting up a card file of the membership, obtaining registration lists, appointing deputy registrars and working out in detail the methods by which the local union will register all members and their families.

3) In those cases where a local union has completed a registration check we generally find that this has not included the wives or other adult members of the family. In such cases we arrange to have that done and plan additional registration work on a community level.

4) In every local we emphasize over and over again the importance of involving the members' wives in political action work and where there is no auxillary in existence we try to get the local union to agree to get one started. Six new auxiliaries are in the process of being organized in Larson's district.

5) In almost every local union we have gone over with the local leaders the possibilities of political work with the AFL and the Railroad Brotherhoods. In many of the smaller towns we found surprisingly good relationships with both the AFL and Brotherhoods.

6) If we have time we discuss local issues, city and county elections that take place this year and state primary elections. In a number of cities and counties where our union is influential, we have urged the local unions to get together with other groups in the community to run independent candidates or to find good candidates to run for local office on one of the two major party tickets.

7) In every case these local metings have been followed by reports and a summary of the work agreed upon to the Board member and President Clark.

Wallace and the Third Party

Because the entrance of Wallace and the Third Party has taken place since the first of January my experience on testing the sentiment for Wallace is restricted to those

local unions visited since then. I believe it can safely be said that Wallace has widespread support in El Paso and in virtually all of the locals in New Mexico and Arizona. In the three locals in Nevada, however, the support is less vocal and less enthusiastic. There is little doubt that the Mexican people of the Southwest give Wallace almost unanimous support. The State PAC meeting in New Mexico passed a Wallace resolution with only one dissenting vote. In the State PAC meetings in Arizona and Montana it is quite obvious that resolutions supporting Wallace could have been passed by large majorities. Had this been done in either case, however, the State PAC would have been split before we had an opportunity to organize it. In each case, although it may not have been correct, we elected to eliminate the Wallace issues from these meetings in order to proceed with the setting up of the State PAC committees. In almost every local visited since the first of the year I have suggested full and complete discussion of Wallace and the Third Party in the local meetings and suggested they advise the International officers of the local's decision, if any. Brothers Mason and Larson can give you a more accurate picture of the sentiment in their districts than I can.

General Remarks

In most states we have only scratched the surface in our attempts to develop political activity. There are many short-comings, there are many weakenesses and a tremendous amount of educational and organizational work has yet to be done. It can be said, however, that almost without exception every local union is beginning to recognize the importance of political action. There is a greater desire to engage in political action work

this year than ever before. There are tremendous possibilities of political victories for our union on both the local and state-wide basis in the Rocky Mountain states. While it is discouraging to see the very low percentage of our members registered in many local unions, nevertheless there is considerable confidence among the local leadership that the registration job will be done. It is hard to realize why many of our local unions in the West have so seldom attempted to use their political power. A contributing factor is the fact that too often a few people in our local unions have become recipients of small favors from the local Democratic or Republican organizations. The main factor, however, is apathy and lack of political understandings. Aside from National elections, in dozens of towns and counties in the mining areas of the western states, we need only to organize our membership and their families in order to take political power completely away from the monopolies. A few examples of this are the mining towns of the Coeur d'Alenes where we could elect whoever we want to city and county offices. The same is true in Montana in the Cities of Anaconda and Butte and to a lesser extent in Great Falls. The same is true in the City of Carlsbad and the Bayard-Silver City district of New Mexico. The same is true in Douglas, Bisbee, Morenci, Miami and Hayden, Arizona. While the towns of Magill, Kimberley and Ruth, Nevada are unincorporated company towns, Ely is incorporated and the seat of White Pine County. In this county we can elect anyone if we organize our membership and their families. In dozens of other western towns our union and its membership is influential to the extent that we could win local elections wholesale by combining our forces with those of other organizations. This undoubtedly applies as well to several towns in the east and deep south. It is difficult to understand why we

should work our heads off to organize a smelter or a mine, or a plant and for years afterwards allow the company to run the town and hand-pick every city or county official. We must become involved in these local elections as an independent constructive force in the community. It is in these local elections, where we can become the champions of good government on popular local issues that our membership can "cut their teeth" politically. The confidence and understanding that will develop in our local unions from testing their political strength in many of these communities will greatly improve the calibre of the local union and make the local respected in the community as an independent political force for the benefit of the people. In many communities our political influence can be used to improve the school system, hospitals and public welfare, child care and recreation facilities, etc. If we do these things, it will be almost impossible for the corporation to ever break a strike. Unfortunately, in most cases our trade union strength to date has been confined to narrw economic issues within a mine or plant while political power and influence, our political arm, becomes a dead limb from lack of use.

Suggestion for Future Work

As far as the present phase of my work in the West is concerned, I want to try to complete within the next two months this elementary work that I have been doing with the local unions. Herman has made plans for similar work immediately in the South, Connecticut, Jersey and sections of the Casting Division. From that time on, however, every organizer should be responsible for the development of the organizational work, registration and fund raising in the local unions which he services. Before May 1st, Brother Coltt and myself must be able

to devote our entire time to the coordination and promotion of our independent political program in the East and the West. Together with the Board member involved, we must devise ways and means of developing the broadcast support behind our candidates in various state, congressional and Senate races. This will require meetings and discussions with other unions, leaders of farm organizations, citizens groups and all other progressive organizations on a state-by-state level. Very soon our union will no doubt be engaged throughout the country in the promotion of the candidacy of Henry Wallace. It should be Herman's job in the East and mine in the West to assist in the development of this campaign to its highest possible level. If the Board believes that this outlook is correct, then in order to guarantee the maximum results on a local union level the following should be done:

1) Each organizer will be held responsible for the detailed development of political activitiy in each local assigned to him.

2) In each local union, registration drives must be organized and deadline set for the complete registration of the local members and their families.

3) The success of the fund raising drive in each local will be the responsibility of the organizer assigned thereto.

4) Pamphlets, movies and our union paper should be used to the utmost in this campaign. To the extent that it is possible, the Political Action Committee will make material available to the local unions at the lowest cost.

5) Our organizers and full-time local people should continue to promote and expand our work with other unions and other progressive groups in the community.

6) Special attention should be given to involving more and more women in this political action work. The wives of many of our members are eager to become involved but need encouragement to get started.

7) There are tremendous possibilities for the rapid growth of the ladies auxiliary throughout the International Union. The establishment of local auxiliaries will give impetus to the political action work in many local unions. The International Board should take whatever steps are necessary to see that the organization of new auxiliaries throughout the union is promoted.

8) In the Southwest, the Mexican-American members of our union comprise a majority in many local unions. By virtue of this, we are in a position to influence thousands upon thousands of votes in El Paso, and the states of New Mexico, Arizona and Colorado. Because of language difficulties and discrimination a majority of the Mexican people in these areas, although citizens, have seldom voted or else were led to the polls by machine politicians only when a heavy vote was needed. Our union should take steps immediately to lead the fight to register and encourage the Mexican people to vote. This Mexican vote, very likely, will be decisive in both New Mexico and Arizona.

9) If this Board decides to engage in the development of the Wallace campaign throughout the country, then our staff people and local leaders should be encouraged immediately to join in the formation of Wallace for

President Committees on a local level. Up to the present time, there has been considerable confusion by our Wallace supporters as to how they should work and with some few exceptions our staff people have hesitated to take the initiative for lack of direction from the International.

10) We believe that our locals must make every effort to remain in and give leadership to State PAC Committees wherever possible but without compromising our independent program or our support of Wallace. In every state it is our responsibility to work with all CIO unions on support of state and congressional candidates that are progressive. This does not mean giving support to reactionary or unacceptable candidates simply to preserve an unprincipled unity within state PAC's. It does mean, however, that we must not be provoked into leaving or splitting state committees because we support Wallace. Let our adversaries within CIO assume the entire blame for splitting or wrecking PAC on technical issues. Let us always be ready to join with anyone who will support good candidates on either a state or national level.

***Motion by Secretary-Treasurer Travis, Seconded by Vice-President Robinson, to Adopt the Political Action Report of Brother Skinner. Motion Carried.

Brother Clott then presented the following Legislative Report:

Legislative Report

I.

Since our last Board meeting in November, 1947, Congress met in a special emergency session. This session

ended shortly before the holidays. It reconvened again in regular session on January 5th and is now meeting.

The results of the special session are well known. Called by the President to consider two matters of vital importance, foreign aid and high prices, it did nothing constructive on either issue.

Instead of granting aid to Europe's needy and hungry through the organization of the United Nations, which proved so effective in the past, it appropriated millions to bulwark the reactionary governments of Western Europe. It provided arms for the fascist Greek and Turkish governments for use against their own people. Congress gave nothing to the millions of peoples in Europe who bore the bruht of the war. Relief was not used as a means of alleviating hardship and suffering but rather as an attempt to dictate the type of government the people of Europe should have. All this was with the President's blessing.

On price control and inflation the results of the emergency session was just as bad. The reactionary bi-partisan coalition again failed the American people.

It is yet too early to fully appraise the outcome of the present regular session. But already the 80th Congress shows every sign of running true to its reactionary form. We do not have to be prophets to predict that no peoples' legislation will be passed. Undobutedly Congress will attempt to take action to further weaken existing Roosevelt labor legislation. It will attempt to weaken rent control. No effective legislation on price control and housing can be expected. Public health bills and social security measures will again be shelved. A tax reduction bill

already passed by the House is designed to transfer the burden to the people and grant a windfall to the higher income brackets. No legislation to tax excess profits or to curb monopoly practice is being considered.

The bi-partisan coalition does seem intent upon passing the European Relief Program. In essence the proposed legislation follows the thinking of the Special Session. It is merely an attempt to set up on a permanent basis and with some modification the type of aid given last November. Again it completely by-passes the organization of the United Nations. The proposed program refuses to aid any country which does not submit its economy to our State Department and to Wall Street. It is designed to extend world domination by our corporations and bankers. The core of the program is the rebuilding of a strong Germany to be used as a threat against the peoples of both Eastern and Western Europe, who would assert their economic independence.

Universal Military Training is being considered by Congress as a measure to buttress the European Relief Program. If passed it would be a new departure from our democratic concepts. This measure pushed by the military would bring far reaching changes in our thinking and in our way of life. However, the strong position taken by Henry Wallace, the church groups and labor has caused Congress to move more slowly. At present, Universal Military Training is stymied. Here is an outstanding example of how, despite a reactionary Congress, the people can make themselves heard.

The Anti-Poll Tax Bill has again passed the House of Representatives. But it is in for a tough fight in the Senate where the issue may split the Democratic Party.

No F. E. P. C. or anti-lynching legislation is at the moment being given serious consideration. The Republican majority with an eye to the elections, is making a political football of these issues so vital to our minority groups. Intead of pushing through the poll tax bill which has already jumped one hurdle, it now talks of substituting instead an anti-lynch law which would leave enforcement up to the states. How such a law would operate in the Southern states is obvious. The American people have expressed overwhelming sentiment for the immediate passage of all three issues.

While Congress stalls on strengthening the civil liberties of the people, and the past few months have witnessed a period of unequalled with-hunting and red-baiting hysteria. Putting to shame the Hitler technique, the House un-American Committee has attached and hounded every liberal and progressive organization in America. By its standards, no union member, no liberal or progressive could feel free to act. It has deprived of livelihood individuals who refused to be intimidated. Its chairman, J. Parnell Thomas, boasted on the floor of the House of Representatives of the number of people his committee sent to jail. At the present moment, it is considering legislation to deny the Communist Party the right to operate as a political party. Such action can of course be recognized as the fascist method and is merely the smoke screen for what the Thomas Committee now prepares itself—a full-scale attack on labor.

What, of course, is most disconcerning in this dismal picture is that although reaction holds forth in Congress the fighting liberals and crusaders of other years have disappeared. Senator Pepper has weakened. In the House of Representatives, only Marcantonio continues to fight

To those who watched the emergence of the spirit of the New Deal it is difficult to realize the change and the fear that has come over the nation's Capitol—a fear that has been aided and abetted by certain leaders of labor as the report will show later.

II.

Several months ago, a petition on the high cost of living was circulated among our membership. This campaign was the first attempt to test the sentiment of our membership since the passage of the Taft-Hartley law. The results were spotty. Best results came from those sections of our union where effective political and legislative committees were functioning. 1948 is a crucial year in the political life of our country. The International Union has already gone on record for effective political action. Therefore the Washington Legislative Office has in the past months, and will more so in the coming months, be geared to the task of bringing the legislative issues to our membership. A clear understanding of the role played in Congress by their representatives will be in our membership's hands an important weapon in driving the reactionaries out of Congress. A regular bulletin is now coming out of the Washington Office which contains brief analysis of the important issues and suggested actions. As a result of this information, there is an ever-growing request by our locals for the voting records of Congressmen and Senators. This is an excellent sign. The voting records of all Congressmen on major issues is being compiled and will be available and sent to all locals. At the end of the session the final and complete records will be assembled in time for effective use in the summer and fall months of this year. In addition, requests for special and detailed information on the actions of parti-

cular Congressmen can be had from the Washington Office. With the accent on Political Action, until next November the Washington Office will also assume responsibility for assisting the Board members and local unions in the East and South in developing their programs. A political action bulletin for the entire union will be issued from Washington. It will be based on the field experience of the Political Action Committee of our union and will not only be of importance to the officers of local unions but of equal importance to shop stewards.

When the Executive Committee for political action work was set up last November, the Washington Office was assigned as one of its jobs the maintaining of a liaison with National CIO-PAC. It is obvious that such a task now becomes harder because of division in political thinking in CIO. Nevertheless, it should be noted that attempts will continue to be made to work out joint understandings with National CIO-PAC on local and state levels.

One legislative issue of vital importance to our membership is the premium price plan and subsidy bill. It is agreed that should the price of nonferrous metals fall substantially a much greater proportion of our membership than the 2500 miners in the Tri-State now out of jobs would be affected. It is also agreed that if premium price legislation were passed, putting in operation most of the Tri-State mines, then the other mining sections now able to operate because of higher prices would also be protected. Last year, because of considerable activity both on the part of ourselves and the small mining operators, the bill passed the Congress. On the advice of Secretary of Commerce Harriman, the president vetoed the legislation and the bill seemed dead. We have con-

ducted, however, continued intensive effort on this matter and there now seems to be hope again of revising this legislation. Last month the American Mining Congress went on record for the bill. More recently in cooperation with Board Member Douglas a series of meetings were assisted by the Research Department and the Legislative Department. As a result, additional meetings are now planned in Washington with the Senators in the hope of getting action. The possibility of getting such legislation past the president is not clear, although recently Secretary of Interior Krug indicated he favored it.

As another aspect of the Tri-State situation, discussions were held several months ago on the matter of special legislation for miners on health and sanitation improvements in the mining areas. The Educational Director and myself met with the Director of the U. S. Public Health Service. This question will, of course, require much more exploration and discussion.

III.

In discussing the Washington Legislative scene, it becomes necessary to point out the role being played by certain leaders of the CIO, notary James Carey. Not all the success of reaction is due to the Republican-Democratic coalition. Carey, Rieve, Reuther and their representatives in Washington have materially aided the program of the N. A. M. by their departure from the principles upon which the CIO was founded. They have tied the official position of CIO completely to the disastrous policies of the Truman administration. As a result every attempt by those legislative representatives of international unions who fight effectively for positive legislation is stymied. Unions such as ours, U. E., F. T. A., and Longshore now

find themselves being more and more isolated from general CIO legislative activity. For many years, our union had representation on the CIO Executive Committee on Legislation. We do not have this position now although unions such as the Oil Workers and the National Maritime Union with a smaller membership than Mine-Mill are represented. Even the U. E. has not escaped. Recently its representative was removed from the chairmanship of the important Sub-Committee on Economics and the position filled by the representative of the Textile Workers Union. This was done despite the fact that Mr. Nixon, U. E. representative, is considered one of the most able labor men on this subject. Naturally, this has had its effect in Congress. Men like Thomas, Murray, Wagner, Pepper and others become confused. They become unable to carry on the fight for labor and against reaction as they have in other years. Those unions therefore who trye to carry out a fighting program upon which the CIO was founded, and to rally the liberals in Congress behind such a program, now find themselves forced to adopt independent legislative activity. Only in this way can our union carry out its convention mandates, the instructions of the International Officers and truly serve its members.

Finally, our legislative program has been turned to our American membership. We have a growing Canadian membership. Similar problems are being faced by Canadian workers and it becomes obvious that some legislative program and activity must be developed in Canada. While the Washington Office could through cooperation and correspondence with Board members Carlin, Mason and Powers issue legislative bulletins to Canadian locals it appears obvious that this could best be handled by the Canadian Board member. However, di. ussion with Vice-

President Robinson and other Board members would indicate what method should be used to best serve the interests of our Canadian membership on this matter.

***Motion by Brother Powers, Seconded by Brother Eckert, to Accept the Legislative Report. Motion Carried.

President Clark then raised the question of the indorsement of Wallace for President by our International Union and stated that, as President of this Union, he was going to recommend to the Board that we take action to indorse Mr. Wallace's candidacy for President of the United States. (Applause.)

Statement by President Clark on Indorsement of Wallace.

The year 1948 presents to the American people both a serious challenge and a great opportunity.

The challenge is—a people's fight against depression and poverty at home, and an imperialist war abroad.

The opportunity is—the building of a great people's political movement with a man to lead it whose sincerity and ability is unquestioned and whose spirit is great.

We, the officers and members of the International Executive Board, cannot help but feel a strong allegiance to this great and humble champion of America's common man. This leader we speak of is Henry A. Wallace. Our positions of leadership in this Union charge us with the responsibility of making the same fight for our membership that Wallace is making for all Americans. Our Executive Board and our membership find common cause with Wallace in the fight for a people's government.

We are, therefore, impelled to declare our indorsement of Henry A. Wallace as independent candidate for President of the United States.

It is not difficult to make this decision. On the contrary, it is quite simple to choose between peace and war, hunger and plenty, liberty and slavery. That is why we are confident that the membership of the Mine, Mill and Smelter Workers will indorse our position and join with us in the big job of amassing support and votes for the election of Wallace and a people's Congress. Let it be clear here that this decision does not deny any member his right of free political choice. It is a guide based upon our analysis of the political scene.

This decision has been made after due consideration by the entire Executive Board. It is made as a result of large sections of our membership having expressed themselves in resolutions, letters, and telegrams. As the campaign reveals the true significance of Wallace's fight, we are confident that even those members of our Union not yet fully convinced of the wisdom of this action will enlist in the struggle to achieve a progressive victory at the polls in November.

Today, two and one-half years after the last bullet was fired in the biggest war in history, we find the hopes and aspirations of the millions of men and women who fought on the battlefields and worked in the shops being ground to dust. Instead of the long period of peace we envisioned, we find the American people being driven toward a new and horrible war. Instead of a higher standard of living, we are confronted with a serious and destructive inflation. Instead of freedom from fear, we see on every hand the arrests and persecution of labor

leaders and other progressives. These events are the result of a planned program—the program of Wall Street monopolists and super profiteers. For super-profits they rob the American people of their wages and savings; for super-profits they attempt the destruction of the labor movement through the Taft-Hartley Law; for super-profits they raise Hitler's cry of "Communist" against every progressive thought and idea in America. For super-profits they seek world domination of other peoples and are willing once again to risk the blood of our sons to attain it.

As a result of the lower living standards created by this profit program of monopolies and trusts our Union is demanding a thirty cents per hour wage increase in order to partially recover the workers' loss in purchasing power since the removal of price control. The achievement of these demands will not be easy. We must be prepared for struggles to win them and to hold them.

Like many other unions we have won large wage increases during the past two years only to see these gains destroyed in the halls of Congress. This experience has proven to all of us that we must not repeat the mistakes of 1946 in 1948. Economic action without political action is futile. Therefore, a major part of this fight to preserve our living standards is a political fight—the fight for a landslide of votes for progressive candidates next November.

It has always been the hope of people in a democracy to seek adjustment of their problems by the use of the ballot. Through the ballot the American electorate sought and obtained improvement in their well-being through the election of Thomas Jefferson, Andrew Jackson, Abra-

ham Lincoln and Franklin Roosevelt. These great and revered presidents were men of the people. They were elected and held office not by the support of political machines, but by the support of the common people. Because Henry Wallace has that kind of support, the people will turn out next November to cast the biggest vote in all American history.

We cannot agree with those trade union officials who glibly but blindly oppose the organization of a new political party. While expressing their opposition they fail to offer the laboring people an acceptable substitute for the candidacy of Wallace. We are told to support either a Republican or a Democrat for president. We are offered the false theory that support of Henry Wallace will make it more difficult to elect a people's Congress. On the contrary, Wallace's entrance into the '48 political campaign will aid the election of candidates in the both parties who stand for progress against reaction, for peace and against war.

As always, our membership will support genuine progressive candidates for Congress and for state office regardless of party labels. Such candidates whether Democratic or Republican will welcome the support of union members who may also be supporting Wallace for president. In short, there is no contradiction between supporting Wallace for president and voting for progressive Democrats or Republicans. However, those who blindly oppose Wallace on the theory that his candidacy will insure the election of a reactionary speak as though one or the other of the old parties can offer the people a clear-cut choice. It is a certainty that a reactionary would be elected without Htnry Walace in the race this year. We must reject the theory of the "lesser evil."

For leaders of any union to advance this theory at this late date in American history is to attempt to bind the American labor movement to the imperialism of Truman and the Wall Street policy of world domination.

The opponents of Henry Wallace within the American labor movement cannot of course propose the Republican Party. Any such attempt would bring universal condemnation from the rank and file. American workers recognize very clearly the Republican Party as the party of the National Association of Manufacturers.

The ill-advised critics of Wallace say they are against both the Republican and the third party. They would leave us only the choice of the Democratic Party and Harry Truman. There can be no logic in this argument unless we assume that the Democratic Party has not changed. The working people of America know that it was. Under Franklin Roosevelt's leadership, the Democratic Party was the hope of the people. While Roosevelt was President, the American people extended their democracy to new frontiers of social, economic, and political welfare. Now, less than three years after his death, the Democratic Party has completely abandoned the course chartered by Roosevelt, and has reverted to its former role as the party of city machines and Southern bourbons.

Let us look at the record. Harry Truman who is today the titular head of the Democratic Party is well known for his record of lip service to the ideals of Roosevelt. His actions are a different story" His real record is one of complete subservience to the dictates of Wall Street and the military brass hats

One of his first acts after becoming President was the elimination of excess profits tax, while attempting to maintain ceilings on wages.

Immediately after the cessation of hostilities in 1945, he lifted price controls on many scarce items, which led shortly thereafter to the complete breakdown of price control.

He called to the White House for consultation and advice the most infamous of all reactionary politicans, Herbert Hoover.

The following spring, Harry Truman broke the back of the railroad strike by threatening the railroad workers with a military draft.

Immediately thereafter he threatened the maritime workers with troops in an attempt to enforce an employers' wage settlement.

It was Truman's administration which revised government by injunction in the coal miners' strike.

It was Harry Truman who characterized price control as "police state" legislation.

It was Truman, more than anyone else, who was responsible for the passage of the Taft-Hartley Bill. For the sake of the record, he vetoed the Bill. His instructions through Senator Barkley to his fellow Democrats were to vote as you please.

It was Truman who appointed the Wall Street lawyer, Robert Denham, to administer the infamous Taft-Hartley Act.

It was Truman who by his actions drove from government service virtually every New Dealer appointed by Franklin Roosevelt.

It was Truman who removed priorities on building materials and contributed to the nation's acute housing shortage.

It was Truman who echoed the demands of Wall Street for wage controls, thereby giving the highest governmental sanction to the lie that wage increases create inflation.

It was Truman whose veto of the mine subsidy bill brought hardship and unemployment to thousands of our members and increased financial difficulties to small mine operators.

While making nice speeches about "civil rights," Harry Truman instituted a witch hunt. By his "loyalty order" two million government employees are confronted by possible dismissal from service without even the right to know of, or to defend themeselves against their accusers.

Truman's recent budget message to Congress, in spite of the nice words, revealed very clearly the direction in which it is taking America. Out of a total budget of nearly 40 billion dollars, 18 billions, or 46 per cent, is earmarked for military might and support of a "get tough" foreign policy. Approximately 463 millions, or slightly over 1 per cent of the total budget, is earmarked for social welfare projects. 400 millions for universal military training can be contrasted with 37 millions for

public housing—enough funds to build only two housing projects.

On the strength of the Marshall Plan alone, Harry Truman deserves to be defeated at the polls in November. It is on this question that the American labor movement must recognize its responsibility to the common people of the world. We must not wait until it is too late to oppose this cold war of aggression and the preparation for the military invasion of other nations. Because Harry Truman and our State Department take their orders from Wall Street, our country is fast losing the "world reservoir of good will" of which Wendell Willkie spoke in 1943.

Yes, the Democratic Party under Harry Truman is a part of witch hunts and repression, speculation and inflation, brass hat diplomacy, universal military training and war.

The Republican Party itself has never done as neat a job for Wall Street as has the Truman administration.

The American people, however, do not propose in 1948 to participate in a "ja" election. There are those who say that Henry Wallace does not have a chance to win. This is not true. The American people today recognize the critical importance of this election campaign. Hundreds of thousands of them will soon be engaged in the fight for the election of Wallace. The recent experience in elections in Chicago and New York City prove that the understanding of the people is greater than many Party leaders care to admit. Almost a half-million citizens in the State of California have signed petitions to put Wallace on the ballot. Why this unlimited faith in Henry

Wallace? It is because Wallace, more than any other man in public life today, wears the mantle of Franklin Roosevelt. He campaigns on a platform so clear that the only resort of his opposition is an attack of name-calling and vilification. He stands for, and is ready to fight for peace, equality, civil rights, improved living standards, trade unionism with dignity, and liberty for all people.

The International Executive Board urges the membership of Mine-Mill to assist in the formation and promotion of Wallace-for-President committees and to give energetic support on a city, state and national level to his candidacy. A people's victory is in the making. The "century of the common man" can be our reward.

***Motion by Vice President Robinson, Seconded by Board Member Wilson, That the Executive Board Go on Record Formally Adopting the Statement Indorsing the Candidacy of Henry Wallace for President of the United States.

Discussion on the Motion

President Clark then asked each Board member for a picture of the political situation in their districts.

Mason: (District No. One.) As far as Montana is concerned, the locals are in favor of the International taking this action on Wallace. These locals are opposed to the National CIO resolution on this. Two of the District 1 locals came out immediately after Wallace had announced his candidacy and indorsed him. In Colorado, nearly all locals have indorsed Wallace and have asked the International Union to do likewise. We have two locals in Wyoming, both of which have indorsed Wallace and

have requested me as Board member to urge this Board to take a similar stand. There is no doubt that the workers of District 1 are overwhelmingly in favor of Wallace and great resentment not only by Mine-Mill locals there but some others has been made against the resolution of National CIO against Wallace.

Larson: (District No. 2.) In New Mexico, most of the locals there have expressed overwhelming support for Henry Wallace.

This is true of Arizona and Texas, as well, especially the El Paso and Laredo locals which are working for his candidacy. There are some who are not in favor of coming out for Wallace at this time, but I would say the overwhelming majority of our members are for Wallace. In the States of Utah and Nevada, I would say there is opposition to a stand in favor of Wallace, not because they have anything against Wallace but because of the internal situation in these two states where some of the workers are afraid this might be another weapon to be used against them; it is also based in these two states on the fear that it will be impossible to work with other labor groups on legislative committees if we come out for Wallace. Also the new state primary law will make political action work very difficult in Utah.

Van Camp: (District No. 3) There has been an intensive campaign in Illinois by the Progressive Party to put Wallace on the ballot in this state. It is still going on and will undoubtedly be successful. Our locals in the state have played a role in this campaign. However, there is opposition at the present time in some of our locals to the candidacy of Wallace, due in part to the presence of the Verdus. However, all of our locals with whom I have

talked, indicated strong resentment at the position of National CIO in prohibiting autonomous internationals to determine their own policy on this question.

Douglas: (District No. 4) There is no doubt that certain Mine-Mill renegades, now placed in high positions in Missouri and other places in District 4 by National CIO, are confusing the issue and making it difficult for the Wallace candidacy. However, I think the indorsement of Wallace by the International Union will be good and we can now go to our membership and explain the reasons why and try to get their indorsement also. I think the majority of District 4 locals will go along with it.

Wilson: (District No. 5) South Carolina locals are for Wallace 100 percent; Georgia and Mississippi, about 50 percent so far; in Alabama, the support is about 60 percent. As the campaign develops, I think these other locals will indorse him also. At any rate, a forthright position by this Board will clarify things and make it possible to exercise real leadership and direction. However, I would not be in favor of indorsing a Third Party as such because of the possible confusion that would result, especially on a Congressional level.

Pezzati: (District No. 6) The problems created by this indorsement are the same in District 6 as any other. We have several locals which will go along on this indorsement; in others, there will be some resistance to it; on the whole, there is definitely a positive sentiment for Wallace throughout the Eastern states. His personal appearances have been remarkably effective, drawing crowds in numbers that are precedent setting. Our job is an organizational one. I believe our whole approach should be one of tying up the wage question with the Wallace

candidacy because there is certainly no doubt that they are connected and the success of one campaign will depend in large number on the other. The Wallace program will have a favorable, unifying effect on our union. I therefore regret the situation in Utah where the wage fight and the political fight are separated. I believe the Wallace candidacy offers us in Utah a real way of unifying our membership. I also think serious thought should be given to the outright indorsement of a Third Party as such.

Powers: (District No. 7) I would say that California locals, ours and many other CIO unions, are doing a bang-up job in getting Wallace on the ballot in the State. There is no question as to where our locals stand on this issue: they are for Wallace. In Washington and Idaho, there are locals which are still expressing opposition to his candidacy, but as our position becomes clear to the membership, I believe they will see the wisdom of supporting his candidacy.

Eckert: (Casting Division) I think the situation in Casting can be summed up in the Resolution which was adopted at the Casting Conference in Chicago a short time ago which came out positively for the indorsement of Henry Wallace and a Third Party.

* * * * * * * *

Brother Howard Lee discussed the matter of the Third Part yand pointed out the necessity explaining that the Third Party was not a splitting movement as spread by the two major parties, but that instead it could play a much greater role in seeing that progressive candidates of the Democratic and Republican Parties are elected.

Brother Lee suggested that a statement be adopted to be sent to Senator Tarylor of Idaho advising him of our stand on Wallace and asking him to run for Vice-President. Brother Lee mentioned that the Walalce indorsement could be used in Utah as a unifying force to bring the rank and file together here behind a fighting program.

Brother Dichter stated that the Board must do more than merely issue a statement indorsing Wallace's candidacy, that it should begin immediately to implement the indorsement by a real organizational and educational campaign among our membership, to explain why we are indorsing him, even though the AFL and other CIO unions have not, and that if the proper work is done in the locals, we will be united as never before when contract negotiations come up.

Educational Director Dolan suggested that the indorsement of the Third Party should be included in the Resolution, that Truman's record must be cited in detail in the statement; and National CIO must be condemned for its position on this question.

President Clark stated that while most of the Board members were behind the Third Party movement, he did not think it advisable to include an outright indorsement of the Third Party in this Resolution, and that the injection of the Third Party issue at this time might cause serious confusion.

* * *Vote on Motion to Adopt Statement Indorsing the Candidacy of Henry Wallace for President of the United States. Motion carried unanimously.

* * *Motion by Board Member Mason, Seconded by Board Member Eckert, that the Three Political Action Leaders of the Union, President Clark and Brother Clott and Skinner, be Instructed to Draft a Resolution asking Senator Taylor to run with Wallace:

Amendment by Brother Robinson, Seconded by Brother Wilson, that we send a wire to Taylor asking him to become Candidate for Vice President with Wallace on the Wallace ticket. Amendment carried.

Vote on Motion as Amended. Motion carried.

Adjournment for lunch.

Thursday, February 19, 1948

Afternoon Session

The entire afternoon session was devoted to a discussion of the District Union No. 2 situation.

In addition to the officers and Board members, all of whom were present, the following were also in attendance:

Charles Brooks, Local 392

W. P. Reese 392

Clarence Reynolds 91

Joseph Martinus 99

Con. Keith, Local 347

- Harry Parks 65

George Wilde, President District Union No. 2

The verbatim transcript of this session is on file in the International Office. Board action on the matter is contained in the minutes of the following morning: Friday, February 20th.

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Friday, February 20, 1948

Morning Session

President Clark called the meeting to order at 9:10 a. m. All officers and Board members present.

The first item of business was a bill presented to the Board for payment by Board Member Mason, on behalf of Denver Industrial Union Council for work performed by members of the Council for Mine-Mill District 1, in the amount of $17.45.

* * *Motion by Brother Mason, Seconded by Brother Carlin, to pay bill of $17.45 to Denver Industrial Union Council. Carried.

* * *Motion by Brother Mason, Seconded by Brother Powers, to pay bill for $50.00 to Local 690, Alberta, for expenses incurred for research material in preparation of brief, with understanding that Local stands balance of expenses. Carried.

Education Director Graham Dolan then presented the following report:

Report of Director of Education to Mine-Mill International Executive Board at Salt Lake City, Utah

President Clark and Members of the Board:

Recently I made a partial report to President Clark on our perspectives for education this year. Some of the information contained herein is taken from that report, although the recommendations are slightly altered in the light of additional experiences in the field.

In the first three months of our educational program much time has been spent in gathering various facts and information which the director could reasonably expect to utilize in the devlopment of a program for our union. I felt that before commencing our own program it would be wise to study at some length the educational facilities of other labor unions and other organizations concerned with adult workers' education. I felt, too, that the experiences of others engaged in this work undoubtedly would prove of considerable value and would obviate much trial-and-error work. Since I did not feel that Mine-Mill could afford the luxury of waiting for the development of the "perfect" educational program, my goal was to study the field quickly, rejecting those methods, techniques, and subjects which had not met with much success, and borrowing those which were most apt to fit our situation and get the job done we wanted done. This I did for approximately my first month on the job.

Some of you, perhaps, have noticed that I have been motivated by an acute sense of urgency regarding education. I have felt from the beginning that we are fight-

ing time. The wartime slogan, "It's later than you think," adequately describes our situation, I believe. Without indulging in agitation on the subject, I think it can be said that all of us feel keenly the urgent need to prepare the membership for unprecedented struggles this year. I know we have said this before, and perhaps we are guilty of crying "wolf!" once too often, but it is obvious that something besides picnics can be expected from a situation whose chief ingredients are Taft-Hartley, large-scale attacks on civil liberties, super-profits, warmongering, extensive trade union prostitution in connection with the Marshall Plan and independent political action, and an almost certain sellout on the wage issue on the part of some trade union leaders who scorn struggle as they do the workers they represent.

In planning education, it seems to me, we must take full advantage of our position as an exponent of militant trade unionism, a position to which the rank and file will eagerly subscribe, if our experiences in current leadership training schools are any criterion. It does not take my saying so to make it a fact that militant trade unionism has become a position to be fought for in these stormy CIO days. New methods of works are in order as we depart from that era of "hear no evil, see no evil, speak no evil" in our relationships with certain trade union leaders.

It is not necessary, I know, to spend time here agitating this executive board on the value of workers' education. The very fact that you have appointed an educational director indicates your conviction that an educational program is a major weapon in the new struggle. Perhaps there will be shades of difference on how best to

proceed with the program, but on the need for a comprehensive program we need spend no time.

If the need for leadership training is correctly estimated as urgent, in the light of what our union faces in the coming months, then, being urgent, it becomes necessary to find those methods and techniques of education which will accomplish the greatest good, quickly. To me, accomplishing the greatest good in this period means to rapidly expand the forces of leadership in order to be able to cover more ground as the number of more-adequately trained local leaders grows. One of the greatest dangers in workers' education is to spread the training so thinly that the over-all level of understanding and militancy is raised but slightly and leadership training is completely neglected. Slow, deliberate development of trade union consciousness is a perspective we can follow only when we have time. I am very consciously saying now that we cannot afford the luxury of a long-range educational program which holds out the future hope for an evenly-developed state of militancy among the membership. Certainly we can strive for such development, but 1948 demands surgery and not patent medicines.

For example, Mine-Mill has spent considerable time, manpower, and money developing a wage policy which stamps us as a union ready to engage in struggle to fight for the immediate needs of our membership. We have developed a policy, but let us be frank in saying we have yet to develop the necessary militancy which will guarantee the fulfillment of that policy. And we can be sure that between now and negotiation time we will have neither the time nor the resources to develop that necessary militancy with the customary approaches to mass

education—pamphlets, leaflets, films, discussion outlines, information bulletins, etc.

It is true that the major weakness of our educational work to date is the failure to develop the above mass techniques of education, and this phase of the work must be developed rapidly. But if I had to choose between this type of mass education and specific techniques aimed at developing new leadership in this union, I would choose the latter course to the exclusion of the other.

I do not think it is necessary, however, to completely exclude one technique in favor of the other, but as I stated immediately after my appointment, I feel Mine-Mill's educational program must include Both, with a careful eye on the Immediate needs of the union.

The deliberate and careful development of a crops of secondary leadership for our union is what I consider the goal of specific techniques, as compared with mass techniques, or the dissemination of propaganda to the membership as a whole in the hope that some of it sticks.

It was with this in mind that I set out to develop an emergency program, a program designed primarily to develop a corps of militant local leaders who would be able to Help with the bigger job of mass education. Because we have neglected education in the past we find the emergency more acute, the need for additional leadership more apparent. It is here, perhaps, that my approach may differ from the approach some of you may favor. To me, the question is this: If it is agreed that we must develop new leadership rapidly, what is the best method of developing that leadership? If our union's financial picture were brighter, we would not be faced

with the choice of which road to follow first, but would be able to pursue several courses with equal vigor.

Having decided that the greatest need of the moment in our union is the rapid development of rank and file leadership, I chose the obvious technique of leadership training courses for our greatest reservoir of rank and file leaders—the shop stewards and the local union executive boards. Since I felt that mere gestures toward education would not be enough, I decided further that going directly to the source of supply of potential leadership would be our best bet, even though this course meant Temporary neglect of a full educational program designed to raise the development of the entire membership.

After spending some time preparing a course of study, I began to schedule 3 and 4-day leadership training schools in various areas. After consultation with Brother Travis who was then President, I conducted a trial school in Denver, which was held under the sponsorship of the Denver Industrial Union Council. Officers of two Mine-Mill local unions attended the two-day "sample" school. Here I was able to test the methods of presentation and the material I had prepared. After making suitable changes, I then proceeded to Connecticut, it being generally agreed that this area would be most in need of leadership training.

While in Connecticut I conducted five schools. Since leaving Connecticut, I have taught schools at Sudbury, Ontario in District 8, and Danville, Illinois in District 3. Board members and staff members worked hard to make these schools a success. A breakdown of statistics for the schools is as follows:

Dates Place	Locals Participating	No. of Students	Class Hours
Dec. 19-20			
Denver	557, 590	8 (MMSW)	4
Jan. 5- 7			
Waterbury	569	40	12
Jan. 12-14			
Bridgeport	320, 623	30	6
Jan. 19-21			
Torrington	423, 620	50	12
Jan. 23-25			
Stamford	552	22	6
Jan. 26-28			
Ansonia	445	53	12
Feb. 2- 4			
Sudbury	598	75	12
Feb. 9-11			
Danville	854, 632, 209, 449, 808	80	15
8 schools	15 locals	348 students	79 hrs.

Until I can check all of the registration blanks, the number of students is an approximate figure only, but it will not be much different from the 348 total here. The class hours indicate whether there were more than one set of classes in a given school. Some schools ran mornings and evenings, some evenings only. But a total of 79 hours were spent in the classroom by the director.

My own reaction to the schools is that they were extremely successful. The curriculum we chose included three subjects which were capable of combining academic and agitational teaching. On this point, the schools have taught me that mere classroom teach is of little value unless it is combined with old-fashioned agitation designed to translate the newly-acquainted knowledge

into militant action. To expose Taft-Hartley, for example, without pointing the way to methods of mass resistance and mass action, would be a complete waste of time. It is here that our education program departs from the programs of those unions which are content with education for education's sake.

The three subjects covered were Collective Action, Taft-Hartley, and Wages and Profits. In addition to the material indicated in the attached outline, the classes were conducted with the aid of film strips, quizzes, charts, and blackboard diagrams. The summation periods were devoted to agitation designed to translate the material into action at the shop level.

The schools were consciously restricted to Mine-Mill shop stewards and local union officers. The influence of these approximately 350 leaders on the membership of 15 local unions will be tested in the wage struggles and political campaign ahead. In several of the schools, non-Mine-Mill students attended from other unions. These students are not included in the attendance figures.

Now it can be argued, I suppose, that the International Union did not intend merely to hire a teacher, but wanted a director of education. With this I agree. There are, however, certain dangers in assessing the leadership schools merely in the light of how many students were taught and how many locals were covered. With these conceptions I want to deal now.

More than just increasing the knowledge of rank and filers, the schools were invaluable to the director who learned more about the membership of this union in two months' time than he did throughout the entire period

he was editor of the union newspaper in his earlier Mine-Mill employment. I come out of this first series of schools more convinced than ever that to hire a director of education to sit in an office and "master-mind" an educational program would be a waste of union money. This is proved, first of all, by the fact that much of the material orginally prepared for the leadership training schools has been discarded in favor of other material which more adequately answers the questions in the minds of our membership.

My experiences in the schools have taught me that it is impossible to be a successful director of education or to prepare a good education program unless this program is developed from below and the director, personally, is able to constantly check the reception the material receives. For one thing, the presentation of material took a bolder, more militant approach in the later schools than it did in the earlier schools. I discovered that the secondary leadership of this union is ready for a bolder approach.

Primarily, however, the reason I chose the school approach for the beginning of our program is because of the emergency nature which education must assume. I willingly grant that we Must develop education for All of our members. I grant that we are neglecting the mass techniques. I grant that I am not covering the ground as rapidly as I should. But even granting these things does not contradict the wisdom of getting down among the membership in a real, basic way. I want to continue the approach I have chosen, but it is obvious that certain refinements are now necessary and these refinements must be made in the light of covering more of the membership more quickly than I have recently.

Also, these refinements must make it possible to follow up the classes already held with a continuing educational program. The obvious question local leaders will ask upon the completion of a school is "Where do we go from here?" The answer is that we must now expand our educational program to accomplish four immediate objectives:

(1) We must see the necessity for continuing the leadership schools and for having them held in as many locals and regions as we possibly can between now and the big wage fights.

(2) We must begin immediately to conduct training courses for our staff members to better equip them for the tough role of leadership this year.

(3) We must begin to furnish leadership and material for continuing educational work on the local union level in order to follow up the spade work accomplished in the classes.

(4) We must launch an immediate program of mass education to supplement the training of local leaders and to give the local leaders materials with which they can work in carrying out the program in which they have been trained. Some of this material is in the process of preparation, but on a very limited basis. Expansion is in order.

In carrying out these four objectives we are faced with the very realistic obstacle of restricted union income and our inability to expand our budget. The problem, therefore, remains the same as it has from the beginning: How to develop a comprehensive program of education that

will not cost a lot of money. It is with this in mind that I have tried to plan our next steps in education.

There has been some expression that we can utilize the staff as a whole in carrying out the next steps of the educational program; that the role of the educational director should be to train the staff to carry on with the program and that the director should devote the major portion of this time in the preparation of material for staff use. I have thought considerably about such an approach, and I have concluded that it is somewhat visionary to think that we are going to make assistant educational directors out of every staff member, or even a good number of staff members. They are much too busy. Eventually, of course, it will be possible to train our staff to the point where an organizer also will be carrying on specific educational work. But again I call your attention to the emergency. If we agree to the emergency, we must agree to emergency methods.

The ideal educational approach would be the assignment by each Board Member of one staff member to do educational work in his district. In this way, the director of education would be permitted to constantly develop new techniques on new subjects and our education would proceed smoothly and over a wide area. But this, as I say, is the ideal approach. It is ruled out at this moment because of the financial situation of the union.

In seeking a more practical approach I am making the following recommendations for your consideration and strongly urge their adoption at the board meeting:

Three present members of the staff to be assigned to the director of education. The three additional staff mem-

bers on educational work to be financed by agreement between board members on a pro-rata basis, in other words, shared on this basis by the district budgets in the area to which the three are assigned.

It is not necessary to hire new men and incur additional expense to the international office. Rather, what is needed is general agreement that the union would do well to sacrifice routine organizational help, if necessary, if it could gain enhancing the work of union consolidation with the aid of three additional people in that work. And I consider education the main prop of a program of consolidation.

I am recommending that personnel be selected from the present staff. I would suggest that the personnel be selected from the following group: Sam Feldman, Sylvan Schnaittacher, Alton Lawrence, Hack Gleichman, Jack Marcotti, Howard Lee, Bob Hollowwa, and Howard Goddard.

Duties of Additional Education Personnel: To conduct schools and institute local union educational programs, to assist in the preparation of material wherever necessary, to help train staff members, to hold direct local union education committees, and to generally carry out the details of the education program. The director of education would continue to get into the field conducting schools and generally supervising the activities of the three assistant directors. I would still teach classes. I would be in a better position to prepare a longer-range program, prepare material for use in the field, and to outline a program for mass education and for local union educational programs. In addition, a course for staff members would be prepared. There are several projects which

should be begun immediately, such as various pamphlets and manuals, a film strip based on Mine-Mill's history, and a program to develop shop and local newspapers.

The above suggested program is based on restricted uion income. I repeat, the main obstacle in the path of such a program of education expansion would be our failure to agree that such expansion is necessary and Can Be carried out, even on restricted income and budget. If we agree that education assumes major importance then we can agree also, I believe, that to sacrifice manpower on other routine servicing would be more than overcome by the dividends to be derived from this educational program. First, we must have general agreement; secondly, we must be prepared to recognize that education in the coming period is so important as to warrant shifting valuable staff members to this work. A realistic approach to Taft-Hartley will convince us, I think, that we can get the most out of staff members today if we use them on the work of consolidation. Consolidation is impossible without education. Improved economic conditions, better contracts, will be impossible without education.

The addition of three men to the education staff would enable us to carry out the three objectives mentioned previously. Without these additions, our education program will suffer greatly. If we are interested in economy and envision the establishment of business agents, education will do the job.

This is the first opportunity I have had to officially thank the board for my appointment. I enjoy the work tremendously and am extremely happy to renew the pleasant friendships and associations I had prior to my

entering the Navy. Mine-Mill is being looked to these days for leadership. I think we can give it if we once agree that new methods of unionism are long past due in CIO. We were one of the first to form CIO. We should lead the fight to save it from decay.

* * *Motion by Brother Robinson, Seconded by Brother Mason, that Policy of Leadership Recommended in Brother Dolan's Report be Indorsed by the Executive Board and the Educational Director Advised to Carry this Policy Forward. Motion Carried.

Brother Eckert stressed the need for educational work in several of the Casting locals, particularly in Cleveland, Toledo and Pottstown. Brother Travis said there was also an immediate need for this type of work in the Utah and Nevada area as well. Brother Douglas stated that District 4 was urgently in need of a sound educational program at once.

There was considerable discussion as to the number of assistants which Brother Dolan should have immediately and where they should work. Brother Robinson suggested that the division of work should be arranged so that one person would be responsible for all of Canada.

* * *Motion by Brother Travis, Seconded by Brother Robinson, that an Educational Department be set up in the International Union separately from the Press Department where Educational Expenses have been carried up to this point. Motion carried.

* * *Motion by Brother Robinson, seconded by Brother Mason, that the assignments of the Educational Assistants called for in Dolan's report be worked out by Brother Dolan with the National Officers. Motion carried.

* * *Motion by Brother Larson, seconded by Brother Robinson, that Brother Schnaittacher and Feldman immediately be assigned by the Board to serve as Educational Assistants and work with Brother Dolan on Educational Work, the assignments to stand until the next Board Meeting, and that all problems in connection with the program be worked out with the National Officers. Motion carried.

Brother Dolan then requested permission from the Board to change the dates of several of his classes so that he could immediately begin orientating his new assistants so that they could begin work as soon as possible in the critical areas. The Board members agreed to this proposal.

* * *Motion by Brother Travis, Seconded by Brother Eckert, to have the Educational Report changed so that the country was not divided into specific Geographic areas for work by each Educational Assistant, but that instead, Brother Dolan and the National Officers determine the assignments and schedules of the Educational Department Members. Motion carried.

President Clark then referred the Board members to the question of action on the District Union No. 2 situation. Brother Madill suggested that the Board act first to re-define the boundaries of District Union No. 2 and adopt a statement on this policy for clarification to the locals involved, and the International Union develop a concrete plan to get our program to the membership of Utah and Nevada, and that additional help be given to District No. 2 in developing the program of checkoff card signatures which should be started very soon. He suggested that Brother Schnaittacher be assigned im-

mediately to the Utah-Nevada area. He raised the question of a possible budget to handle the additional expenses anticipated.

Brother Madill then explained in detail the present composition of District Union No. 2, and the actions taken by the component locals with regard to redefinition. There are three Nevada locals in the District Union, which are also affiliated to the Kennecott Council. All three have passed resolutions asking the Board to redefine the boundaries of the District Union. In Utah, the locals which are in the AS&R Council, as well as the District Union, are the Garfield Local 347, which has requested redefinition; Local 640, the clerical unit, with a membership around 40, which thus far is opposed to redefinition; and the Murray Local 395, which has not asked redefinition and which wants to stay within the District Union. In the Kennecott Council, there is Local 392, in Magna, which passed a resolution asking redefinition, and Local 692, the clerical unit, which has also asked redefinition; Local 485, The Bingham Open Pit local, where we have a jurisdiction of about 1200, where we are conducting an organizational campaign, has asked redefinition with some opposition from certain of the leaders. In U. S. Smelting and Refining, we have Local 91, at Lark, 2, Bingham Underground, and 331, at Midvale. Local 2 has asked redefinition. Local 91 is split on the issue, and Local 331 so far is opposed. On Combined Metals, both Locals 431, Butterfield, and 65, Bauer, have asked redefinition.

To summarize, there are about 5,000 members involved in the question of redefinition. About 3400 of these are covered in resolution asking redefinition. There are about 1600 left who would not be covered; and about 500

to 600 who would be set out of the jurisdiction of the District Union, who would be in the jurisdiction of a council who have not asked redefinition; however, most of these locals have said that if we do redefine the boundaries they are going to stay with the International Union. If all locals who come within the jurisdiction of bargaining councils are taken out of the District Union, it would leave about 1100 members still in the District Union. There are 4 important locals which would remain within the jurisdiction of the District Union, besides a group of small miscellaneous locals. There is an additional question of Local 55, an Anaconda property, and some provision should be made for them.

Brother Travis suggested that any local should have the option of being affiliated with both the bargaining council and the District Union if it so desired.

* * *Motion by Travis, Seconded by Madill, that this Executive Board, Pursuant to its authority under article 24, section 1, of the International Constitution and in action on the resolution submitted to the International Convention of 1947 by Local 692, and referred therefrom to this Executive Board for action, that:

(1) District Union No. 2 shall continue to function under the Constitution and Convention Decisions of the International Union of Mine, Mill and Smelter Workers, and

(2) That the jurisdiction of District Union No. 2 shall embrace all Local Unions in Utah and Nevada who do not come within the jurisdiction of industry-wide or company-wide councils, with the understanding, however, that Local Unions who do come within the jurisdiction

of an industry-wide or company-wide council and are affiliated therewith may at their option also continue their affiliation with District Union No. 2, and

(3) That the International Union will continue payment of a subsidy to District Union No. 2; in the amount of one hundred and fifty dollars ($150.00) per month, and

(4) That District Union No. 2 in its new constituted form will be expected to support the policies of the International Union of Mine, Mill and Smelter Workers, and the International Union in its turn agrees to cooperate in every way with the District Union and facilitate its functioning.

(5) That the effective date of the redefinition of the boundaries of District Union No. 2 shall be March 1, 1948, and that all Locals affected by the redefinition be notified that on and after said date, they will no longer be obligated to pay Per Capita tax to District Union No. 2.

Motion carried.

* * *Motion by Brother Travis, Seconded by Brother Larson, that an official protest be sent from this Board to National CIO on the role of Clarence Palmer, President of Utah State CIO Council, in aiding the Secession movement in Utah. Motion carried.

Adjournment for Noon recess.

Friday, February 20, 1948

Afternoon Session

President Clark called meeting to order at 1:30 p. m., and stated that the first point on the agenda would be reports by the Board members.

Mason: (District No. 1) Reporter that there was no secession problem in District 1, and that most of the locals in the District were in favor of the International's position on non-compliance with the Taft-Hartley law. He stated that the educational program projected by Brother Dolan would be of immense benefit in his district. All states in his district have been active in the Wallace campaign and would be gratified at the indorsement of Wallace's candidacy by the Board. With respect to staff personnel, Brother Mason reported that he had three organizers, and requested permission to go into Alberta to make a study of the situation there with respect to Brother Longridge leaving the International staff and going on as business agent for the locals in that area.

He reported that negotiations would be the immediate task in the next few months in Anaconda. He discussed the difficulties being experienced on political action with respect to Mine-Mill membership in the State CIO councils.

Brother Travis stated that every effort should be made not only in Albert but elsewhere in the International to have local business agents set up to relieve the International of the expense involved in jobs where servicing is the only job of the staff representative. Brother

Robinson discussed the problems in connection with the Butte Local 1 and urged that a real campaign be carried on to counteract the propaganda and infiltration by the Anaconda Corporation. It was agreed that Brother Mason should go to Alberta to determine what the situation was there with respect to the services of Brother Longridge.

Larson: (District No. 2) reported on the secession threat in Utah and Nevada, and the organizational job to be done in the Bingham Open Pit Mine and stated that he was recommending to the National Officers that a member of the local union in Bingham he put on the staff temporarily to complete the organization there and permit Brother Petersen to handle some of the other situations in Utah. He stated that he thought a sixty day period would be adequate for the services of the temporary organizer. He reported on the amalgamation of the Bayard-district locals.

* * *Motion by Brother Larson, Seconded by Brother Robinson, to approve the Amalgamation of Locals 63, 69, 530, 604 and 628 into Local 890. Motion carried.

Van Camp: (District No. 3) Reported on the difficulties in his district because of the Taft-Hartley law. He also called attention to the need for building up the Omaha AS&R local, to which Brother Fernandez was temporarily assigned. He requested additional help for the LaSalle area, and urged that attempts be made to get back some of the key locals which seceded to the Shipyard Workers.

Douglas: (District No. 4) Reported that in his district six companies were so far refusing to bargain, and that

a real fight would have to be made when contracts expired.

Wilson: (District No. 5) Reported that the staff in District 5 had worked out a systematic curtailment of expenses and that they were meeting their quota. He stated there was no special problem in the district which needed Board action.

Pezzati: (District No. 6) Stated that the main emphasis in his district was on consolidation, and that preparations were being made to counteract possible raids by either other unions or the employers. On personnel, he reported that he had 8 organizers, and that according to the last Board meeting, the staff had to be cut by one more.

Brother Travis suggested the possibility of International Representative McManamon being put on as business agent by the Baltimore AS&R Local 625. Brother Pezzati reported that the company there was increasing by several hundred, and that in addition there were organizational perspectives in the surrounding area which Brother McManamon had begun work on, as well as several smaller locals which McManamon was servicing. However, he stated he would look into the matter and report to the National Officers.

Powers: (District No. 7) Reported that International Representative William Gately was on a leave of absence from the payroll to devote full time to the Third Party campaign in California, and that he was requesting an extension of his leave.

* * *Motion by Secretary Treasurer Travis, Seconded by Board Member Pezzati, that Brother Gately's leave be extended. Motion carried.

Brother Powers reported on the difficulties our Canadian locals were having under the Canadian anti-labor laws and that the B. C. District Union had spent a large sum of money in negotiations, etc., and that it was now requesting a loan from the International Union.

* * *Motion by Brother Mason, Seconded by Brother Carlin, that the British Columbia District Union be granted a loan of $1500.00 to be repaid following the signing of the contracts. Motion carried.

President Clark then read a letter from Brother E. A. Bush, Financial Secretary, of the Kellogg Local 18, requesting that the International waive its per capita on initiations secured during March, April and May of this year in order to enable the local to reimburse its members for working on an organizational drive. After some discussion, the following motion was made:

* * *Motion by Brother Travis, Seconded by Brother Madill, that Brother Clark convey to the local the feeling of the Board that it would be setting a bad precedent and that because of the financial condition of the International Union that we cannot grant the request. Motion carried.

Brother Clark then took up the matter of the request from the Clerical Unit of the Tacoma Local 25 for a separate charter. Brother Powers reported that the Clerical Unit of that Local had voted to ask for a separate charter, and that the full Executive Board of Local 25

had recommended it, but that the general membership in a regular membership meeting had voted against the issuance of a separate charter to this local, that the vote against it had been a ratio of about seven to one. Brother Powers stated that he personally had recommended the issuance of a separate charter but that the membership of the local had turned it down.

* * *Motion by Brother Eckert, Seconded by Brother Travis, that Clerical Unit of Local 25, in view of position taken by general membership of local, be denied their request for a separate charter. Motion carried.

Carlin: (District No. 8) Reported that in compliance with the action taken at the last Board meeting that his budget had been reduced by $50.00, and that the $100.00 going to Pt. Colborne should be discontinued, and that there was still one organizer to be removed from the staff to carry out the last Board motion, which he felt should be Brother Rankin. Brother Carlin suggested that the International officers write the Pt. Colborne locals advising them of the difficulties in continuing the $100.00 per month subsidy any longer. He also reported on the situation in the Flin Flon area which he said could become a functioning Mine-Mill local. He reported that the locals in District 8 were cooperating in the organizational drive by contributing well to the fund to subsidize the radio programs. So far both the Pt. Colborne and Sudbury locals have contributed. He reported Doherty had been left on the staff despite action of the last Board meeting because of the critical condition existing in locals in his area, and that subsequently Brother Doherty has been carrying out the International policy.

Brother Travis stated that International Representative Knott had been sent into District 8 even though the last Board meeting had not authorized it because of the critical situation existing in the locals in the Pt. Colborne and Niagara area, and that Brother Knott has done a good job in solidifying the locals behind the International's program and preparing them for contract negotiations.

Brother Robinson reported on the status of the drive to organize the gold miners in the Timmins and Kirkland Lake areas and stated that the staff was doing an excellent job. He stated that the workers in the Timmins local had reversed their previous stand to accept the contract offered by the company and were now holding out for real gains, and that this was the position being taken by the Quebec locals. He reported that the Canadian gold operators were importing displaced persons of fascist background in Europe and were refusing to hire loca miners, which was creating a problem. He stated that the Canadian government was continuing to bear down on our union and that organization would be made more difficult because of the interference by the government. Brother Robinson reported that for the first time, the Pt. Colborne and Sudbury locals were uniting for their negotiations with the International Nickel Company.

Brother Travis read a letter from Brother Knott requesting that the International terminate his services because of his inability to find housing in Canada.

* * *Motion by Brother Eckert, Seconded by Brother Van Camp, that Brother Knott be notified that if it becomes necessary for him to resign for any reason, the

International would pay his transportation back to Arizona, but that Brother Knott be aided in finding adequate housing so that he can remain in Canada, and that Brother Knott be notified that the International Union does not wish to terminate his services. Motion carried.

Brother Carlin asked to be excused from the balance of the Board meetings, so that he could attend an important meeting of the Canadian Congress of Labor the following day.

* * *Motion by Brother Eckert, Seconded by Brother Pezzati, that Board Member Carlin be excused. Motion carried.

* * *Motion by Brother Robinson, Seconded by Brother Carlin, that Secretary Travis draft an appropriate letter to R. A. Mosher of the Canadian Congress of Labor to make strong representations to the Canadian Government to maintain the present immigration regulations for all trade union offices without discrimination against any. Motion carried.

Brother Mason asked to be excused because of commitments made in his district to attend several important meetings.

* * *Motion by Brother Eckert, Seconded by Brother Carlin, that Brother Mason be excused. Motion carried

Eckert: (Casting Division) Reported briefly on his district, and stated that he had requested Brother Hollowa of the District No. 3 staff to be assigned temporarily to the Detroit area to help with the situatio caused by the attempts being made by UAW to raid ou

Casting locals in that area. He stated that meanwhile Brother Vettorel was being placed on the staff in District No. 3 to remain until Brother Hollowwa returned to his permanent assignment.

Brother Travis read a letter from the Chicago Amalgamated Local 758, requesting that in view of the critical financial situation existing within Local 758, caused to some extent by the large contribution made by the Local to the International's Fighting Fund that the International Union grant a $400.00 per month subsidy to the local. Brother Travis stated that this local has always played an outstanding role in carrying out policy and contributing so generously to the International Union during its fight against the secessionists and stated that everything reasonable should be done to aid them in their financial crisis.

* * *Motion by Brother Powers, Seconded by Brother Mason, that the matter be referred to the National Officers and Board Member Eckert to determine what can be worked out. Motion carried.

Brother Clark announced that this concluded the reports from the District and next went on to the miscellaneous items on the agenda.

Brother Clark read a letter from Vice-President of the CIO, Allan S. Haywood, requesting that the International Union assume the salary and expenses of Research Director Bernard Stern, who has been paid his salary by National CIO. Brother Clark then read his reply, in which he requested that in view of the critical situation in our Union that the CIO continue to pay Brother Stern's salary, at least for the next period.

* * *Motion by Brother Travis, Seconded by Brother Madill, that the National Officers be empowered to transfer Brother Stern to the International's payroll if it becomes necessary because of his removal from the CIO payroll. Motion carried.

Brother Travis raised the question of a National Lead Company Council and stated that the designation of a coordinator be delayed until the unions involved have all been contacted and have agreed on the formation of a council.

Brother Clark then discussed the question of the bills submitted by the Bruner-Farabi and Matuska for services in connection with the Gleichman and Wampler cases. Brother Travis stated that the International Union could not take responsibility for this type of legal fees and stated that in all such cases, local defense committees must be set up to defray such legal expenses. Brother Travis said that in the future there would undoubtedly be many such cases and the International Union would not be in a position to pay such bills.

* * *Motion by Brother Travis, Seconded by Brother Eckert, that the International Union pay the disbursements amounting to $1548.87 with the understanding that Brother Douglas will attempt to get the Locals in his area to make up the balance of the fee. Motion carried.

Brother Clark raised the question of Brother Marino for employment on the staff. It was recommended by the Board that Brother Clark write to Brother Marino explaining that it was impossible at the present time to increase the staff and that the International was still engaged in curtailing our forces still further, and that in

the event it became possible, Brother Marino's application would be given consideration.

Brother Robinson raised the question of paying Mary Kalafatich who aided in our education program during the last election in District 1.

* * *Motion by Brother Robinson, Seconded by Brother Pezzati, that a check for $50.00 be sent to Mary Kalafatich to cover expenses incurred by her in helping our Unin. Motion carried.

* * *Motion by Brother Travis, Seconded by Brother Pezzati, that the year book be discontinued. Motion carried.

Brother Larson raised the question about a budget for the Utah, Nevada area. It was suggested that Brother Larson and Brother Madill try to get the locals in the area to subsidize the radio programs being put on by Brother Schnaittacher.

President Clark then called upon the Appeals Committee to report. Report of Appeals Committee, by Brother Charles Wilson:

"The Appeals Committee recommends that Brother H. H. Hultner, of Local 9, be exonerated of charges of which he had been adjudged guilty, this recommendation being made on the prior recommendations of President Clark, Brother Brooks, who was Administrator of the Local, and the organizer now in charge of the district, and that Local 9 and Brother Hultner be so notified."

* * *Motion by Brother Travis, Seconded by Brother Robinson, that recommendation of Appeals Committee be concurred in. Motion carried.

Brother Douglas raised the question of the Zinc Council, stating that both officers had refused to call a meeting of the Council prior to the Mining, Smelting and Refining Conference.

* * *Motion by Brother Douglas, Seconded by Brother Travis, that the President call a meeting of the Zinc Council on petition by the Local Unions on a date to be agreed upon with the coordinator of the Council and the Board Members concerned. Motion carried.

Secretary Travis then read the following excerpts from a letter concerning the murder of a Cuban labor leader and member of Congress: (Letter signed by G. G. Gelt, Representative of C. T. C. in U. S. A. and Canada).

Dear Sirs and Brothers: On Friday, January 23, I read in the New York Times how the General Secretary of the National Federation of Sugar Workers of Cuba, and a Congressman, Brother Jesus Menedez, was killed by being shot in the back and head by Army Captain Joaquin Casillas when Brother Menendez refused to be arrested because as a Congressman he was immune. This prompted me to telephone to Havana to Brother Lazar Pena, General Secretary of the Confederation of Workers of Cuba to inquire about this criminal and unnecessary deed of the big-headed Army captain against the law-abiding, most prominent leader of the sugar workers of Cuba and the American and Vice-President of the International Committee of Sugar Workers organized in Havana, on November 28, 1947, after the suggestion of

Mexican and Cuban sugar workers. He was a Negro labor leader known in the U. S. A. also . . . This is a tremendous stepping up of the terror unleashed by the military, pressed by the big sugar mills, over 65% owned by big North American corporations, against the workers because they refuse to work without a contract and to accept a cut by 40% in their wages this year of 1948, especially when the company's declared clear profits of more than 125 million dollars for 1947 . . . This explains the unnecessary, cold-blooded, uncivilized murdering of Brother Menendez without even giving him the chance to defend himself, for they well know that precisely to prevent any alleged drawing of a revolver, he was always unarmed, although every Congressman can carry a weapon . . . Therefore, to prevent any further unnecessary spilling of good, honest labor blood, the Confederation of Workers of Cuba (Confederation de Trabajadores de Cuba) and the National Federation of Sugar Workers of Cuba (Federacion Nacional de Trabajadores Azucareros de Cuba) urgently and fraternally request you, your parent organization and their affiliates and any other labor organization you may be connected with, to send cables of protest against interference with the bonafide labor unions, unconstitutional arresting of workers and the murdering of Brother Jesus Menendez to: President Dr. Ramon Grau San Martin, Palacio Presidencial, Havana, Cuba, and to: General Genovevo Perez Damera, Ciudad Military, Havana, Cuba.

* * *Motion by Brother Travis, Seconded by Brother Powers, to send cables and register strongest protest with the Cuban Government. Motion carried.

Secretary Travis then reported on a series of bills which he had received from the Trade Union Agency billing

the International Union for work performed for various local.

* * *Motion by Brother Travis, Seconded by Brother Powers, that a letter be written to the trade union agency advising them that the International Union did not authorize such expenditures and that in addition letters be written to the locals involved suggesting that the bills be paid by the local unions. Motion carried.

* * *Motion by Brother Eckert, Seconded by Brother Wilson, that the International Union Officers be empowered to conclude the Bonding Schedules for Local Unions and Staff Members. Motion carried.

Brother Eckert requested the International Union officers to obtain material on blanket travel bonds for the Board members.

With regard to the proposed Group Insurance plan for all employees of the International Union, it was agreed that the plan would be mailed out to all Board members for their approval or suggestions.

Brother Travis then read a letter from Brother Schnaittacher requesting that the International Union establish a budget for his radio broadcasts.

* * *Motion by Brother Robinson, Seconded by Brother Pezzati, that the matter be referred to Board Member Larson for further examination and recommendation. Motion carried.

Vice-President Robinson then suggested a new Organizer's report form. After some discussion and suggestions, the following motion was made:

* * *Motion by Brother Robinson, Seconded by Brother Powers, that the new report form be adopted and put into effect as soon as possible. Motion carried.

* * *Motion by Brother Travis, Seconded by Brother Robinson, that a letter be sent to National CIO protesting the statement by CIO Regional Director Bonnachi in respect to our Union's indorsement of Wallace and the personal attack on President Clark, and in general to the interference on Bonnachi's part into the International Affairs of the Mine, Mill and Smelter Workers. Motion carried.

Brother Petersen announced that the International Union would be extended free radio time to explain its position on the Wallace indorsement over Station KALL.

* * *Motion by Brother Robinson, Seconded by Brother Douglas, that Radio Station KALL be advised that their offer will be accepted and that Brothers Dolan and Wright be instructed to prepare a radio script. Motion carried.

Brother Travis enumerated demands from several organizations requesting financial contributions.

* * *Motion by Brother Eckert, Seconded by Brother Van Camp; that the Secretary write letters explaining the inability of the International Union to make financial contributions at this time. Motion carried.

* * *Motion by Brother Powers, Seconded by Brother Pezzati, that a wire of congratulations be sent to the California Independent Progressive Party, 240 Golden Gate Avenue, San Francisco, California, on the excellent

job done in securing signatures to place Henry Wallace's name on the ballot in California. Motion carried.

Adjournment.

Saturday February 21, 1948

Morning Session

President Clark called the meeting to order at 9:15 a. m. Brothers Mason and Carlin were absent, having been excused from attending the balance of the Board sessions.

Board Member Eckert gave a report on the Balint Defense Committee. Brother Eckert recommended the following Statement on Deportations to the Board:

Statement on Deportations

The policy of deporting non-citizens has always been characteristic of those periods in American history when the Federal Government has played a reactionary role. This was true during the administration of John Adams; his Alien and Sedition Laws roused the American people and helped sweep Thomas Jefferson into office. This was true in the period of reaction following the First World War; the Palmer Raids went to such lengths that it led to a national revulsion which has made the name Palmer synonymous with a policy of terror against aliens.

Despite these lessons of history, President Truman's appointee, Attorney General Clark, is following in the footsteps of John Adams and A. Mitchell Palmer. He has made it plain that the policy of arresting on deporta-

tion warrants alleged non-citizens solely because of their political beliefs is part of the over-all reactionary and war-mongering policies of the Truman administration. Here as in all other major respects, the departure from Roosevelt policies is plain for all to see.

The sheer persecution involved in these proceedings is revealed when it is noted that the fundamental legal issue in all these cases can be settled by the Supreme Court in one case: That issue is whether the Communist Party advocates the overthrow of the government by force or violence.

A test case involving an admitted Communist was on its way to the Supreme Court before the recent wave of arrests. This issue could have been decided without arresting leading labor leaders and others and thereby creating a reign of terror, and it can be decided without similar arrests of 60-odd persons which Attorney General Clark has promised.

Why this policy of unnecessary arrests, of invading the homes of persons who have lived here peacefully for 10, 20, or even 30 or more years? Why are these invasions carried on by groups of FBI agents during the early dawn or late at night? The answer is clear. The arrests of labor leaders like Alex Balint of our own Union (with which we deal in a separate statement), of John Santo of the Transport Workers Union, of Michael Obermeier of the Hotel and Restaurant Union, of Charles Doyle of the Gas, Coke and Chemical Workers, and of Ferdinand Smith of the National Maritime Union, is part of the general policy of attempting to weaken or destroy progressive trade union leadership. The vicious persecution and harassment of Gerhart and Hans Eisler,

the arrests of Communist leaders like Alexander Bittelman, John Williamson, Caludia Jones and others, is part of the general policy of using the Hitler weapon of red-baiting in order to pave the way for war, depression, and reaction.

Persecution for political beliefs violates our democratic traditions and must be stopped.

Particularly, the Administration must cease immediately the recent and shocking policy of refusing bail in these cases. This policy was first applied a few weeks ago to Gerhart Eislar, then to John Williamson, and just this week it was applied to Ferdinand Smith. This is an unconstitutional, concentration camp policy. It is well-known that deportation cases require years, sometimes 5 or more, for final disposition. By refusing bail, the Department of Justice is taking a long step towards imposing concentration camps on citizens and non-citizens alike.

Even a murderer is admitted to bail. Certainly the American people will not tolerate a policy of jailing persons for years merely for their political beliefs and without even the benefit of trial. This is the essence of the police state. We demand that this policy be reversed at once, and that there be a return to the traditional policy of releasing without bail persons arrested on deportation warrants.

Copies to: Truman, Clark; J. Edgar Hoover; Senators; Congressman; American Committee for the Protection of Foreign Born; and others.

Motion by Board Member Eckert, Seconded by Board Member Doglas to adopt the foregoing statement on deportations. Motion carried.

After considerable discussion, the following statement and recommendations were presented to the Board for action on the Balint Deportation case:

Statement on Alex Balint

The arrest of Alex Balint on a deportation warrant in Cleveland, Ohio, by the FBI is part of the drive by the Department of Justice to harnass or destroy the free American trade union movement.

Alex Balint was arrested as he stepped from the train when returning from Kalamazoo, Michigan, where he had gone to help organize the fight of the Precision Casting workers for the retention of their union. The Precision Casting Company has terminated its agreement with our union and has announced that it will no longer recognize our union unless we subscribe to the Taft-Hartley affidavits. At the recent Casting Council meeting in Chicago, Brother Balint had been named coordinator of the Precision Council and placed in charge of the fight for the union with that company. It is no accident that he was arrested while in the midst of this work.

Alex Balint came to this country when he was nine years old. From the moment he first went to work he was active in the trade union movement. While he worked at Republic Steel in Cleveland he was president of the steel local union and helped to bring the Republic Steel Workers into the CIO. When he went to work in

our industry he pioneered in the organization of our union in Cleveland. It is largely through the work of Alex Balint that the International Union of Mine, Mill and Smelter Workers has over 5,000 members in the Cleveland area.

Alex Balint received his education in the American public schools. He received his trade union training in the steel mills, in the casting plants, and in the service of our union. He is now regional director of our union in Cleveland. Alex Balint is one of us.

Alex Balint has been trying to get his citizenship ever since he became of age. The only reason Balint has been denied citizenship is because of his activity in the trade union movement.

The International Union of Mine, Mill and Smelter Workers is prepared to throw all of its resources behind the fight to free Alex Balint. The International Executive Board calls upon all local unions to immediately wire President Truman and Attorney General Clark, asking that deportation proceedings be stopped and that Alex Balint be granted citizenship.

The Committee appointed by the International Executive Board to bring back a program for the defense of Alex Balint hereby makes the following recommendations:

(1) That officers of our International Union become members of the Balint Defense Committee now being organized in Cleveland, Ohio and assume some responsibility for the proper functioning of that committee.

(2) That the International Union support the defense of Brother Balint financially as it is able through the Balint Defense Fund and that all local unions be circularized for a contribution.

(3) That the International Union place $1000 bond for Alex Balint to relieve the members of our Union who laid out the money for the Bond.

(4) That the case of Alex Balint be continuously on the agenda of the International Executive Board until deportation proceedings against him be dropped and he be granted citizenship.

* * *Motion by Brother Travis, Seconded by Brother Madill, to adopt the foregoing statement and recommendations of the Balint Defense Committee. Motion carried.

* * *Motion by Larson, Seconded by Robinson, that the National Officers and Brother Eckert be constituted a sub-committee to follow through on the Balint case. Motion carried.

* * *Motion by Pezzati, Seconded by Robinson, that Brothers Clark and Robinson draft an appropriate statement to be sent to all local unions regarding the assessment. Motion carried.

President Clark then presented the following report of the Ladies Auxiliary Trial Committee:

Report of the Committee to try

International Ladies Auxiliary officers

This Committee consisting of Frank Clark, Chairman, Mike Starr and Erenest H. Love was appointed by President John Clark pursuant to authority invested in President Clark by the International Executive Board. Its responsibility was defined by motion of the International Executive Board adopted on November 8, 1947. The text of said motion is hereinafter set forth.

Motion by Board Member Eckert, Seconded by Board Member Douglas, that the International President appoint an appropriate trial committee to consist of three members of the International Union, not members of the International Executive Board, to hear the charges against the Ladies Auxiliary and it present Officers, such charges to be set forth in due notice o fhearing before said trial committee, and that the trial committee, after the hearing, make recommendations to the International Executive Board for appropriate action. Such charges shall cover all matters wherein the Ladies Auxiliary and its present Officers have functioned and are functioning in violation of the purposes of the Ladies Auxiliary and to the detriment of the International Union. Motion carried.

Motion by Board Member Larson, Seconded by Board Member Douglas, that a letter be sent to Dora Young, financial secretary of the Ladies Auxiliary, advising her that such a hearing is to be held and that no expendi-

tures of funds are to be made from the Auxiliary Treasury, except as authorized by the International Union, until such time as the matter is resolved, that Sister Young be advised that she will be held responsible for any unauthorized expenditure of Auxiliary Funds, and that in the meantime, all Local Auxiliaries be advised to henceforward send their per capita to the International Office to be held in escrow pending the outcome of the trial. Motion carried.

The Committee, with all members present, convened in Room 110 of the Sherman Hotel, Chicago, Illinois, at 10:00 a. m., February 4, 1948, and proceeded thereupon to study the charges and examine the evidence submitted to substantiate the charges.

The Committee first sought to determine whether or not proper and timely notice had been submitted to the defendants and all parties involved to be present for the proceedings. The committee found that ample notice was given the defendants and all parties by registered mail and with follow-up telegrams to be present for this trial. The copies of said notices and the registered receipts proving delivery thereof are set forth in Exhibit I. Our committee was in session throughout most of the day of February 4th and now stipulates that no defendant appeared for the proceedings. Specifically, the officers of the Ladies Auxiliary against whom the charges had been made, namely, Mary Orlich, President, and Dora Young, Secretary, were not present to offer any defense against the charges made.

Our Committee was introduced to the topic of the hearing and acquainted with the charges in a statement submitted by Ken. Eckert in behalf of the International

Executive Board. A copy of that statement is attached hereto and marked as Exhibit J. The International Union was represented at the trial by Secretary-Treasurer Travis who submitted to the committee the various affidavits, testimony and evidence in behalf of the International Union to substantiate the charges made against the officers of the Auxiliary as outlined in Exhibit J hereto attached.

Our Committee thorughly examined the evidence, affidavits and other material submitted by Secretary-Treasurer Travis. This evidence, affidavits and other material is contained in Exhibits A, B, C, D, E, F, G and H attached hereto.

After thoroughly examining all the evidence and taking due note of the fact that the defendants were all given ample opportunity but failed to appear and offer any defense in their own behalf, our committee found that the evidence substantiates in every repect the charges made against the officers of the Ladies Auxiliary

Our committee found:

(1) The Constitution of the Ladies Auxiliary has been violated. The Constitution states—"The objects of this organization shall be to aid in the aims and purpose of the International Union of Mine, Mill and Smelter Workers . . . to support our IUMM&SW Union in all its legislative efforts . . ." The leadership of the Ladies Auxiliary has carried on the opposite type of activity (Exhibit A)

(2) The President of the Auxiliary perpetuates herself in office by illegal machine control, and has denied charters to local unions. (Exhibit B)

(3) The President of the Auxiliary has caused individuals in Butte, Montana to be denied membership in the local auxiliary. Such denial was obviously for the purpose of insuring her continued control of the auxiliary. (Exhibit C)

(4) The Ladies Auxiliary Constitution, Article 2, Section 1, states—"The annual Convention of this organization shall be held on the second Monday in September in conjunction with the convention of our parent organization, the International Union of Mine, Mill & Smelter Workers." The President of the Auxiliary refused to hold the Convention as provided in the Constitution, despite numerous requests from auxiliary members and locals to do so. Instead she held a rump convention in Salt Lake City and at this Convention she refused to even read a communication signed by President Travis, Vice-President Wilson, and Acting Secretary-Treasurer Clark. She did invite, however, people to speak at the Convention people used the Convention as a tribune from which to slander the International Union. (Exhibit D)

(5) The International Union has allotted large sums of money to finance the Ladies Auxiliary. The Auxiliary has refused to give an audited account of how the money was used.

(6) The President of the Auxiliary refused to permit the officers of the International Union to appear before the Executive Board of the Auxiliary, which met in Chicago, May 1, 1947. This refusal was in direct violation of the Constitution of the Ladies Auxiliary. We submit that the Auxiliary can not fulfill its announced purpose of aiding the program of the International Union who have been disavowed by this organization, and these

when it denies to the leaderhip of the International Union the right to appear before the Executive Board of the Auxiliary to discuss how to coordinate and promote the policies of the Union.

(7) The President of the Auxiliary refused the request of President Travis to convene a meeting of the "3-3 Committee" in Butte, Montana on May 1, 1947. The "3-3 Committee" is composed of three officers of the International Union and three officers of the Auxiliary, which was created by joint agreement with the Auxiliary for the purpose of co-ordinating the work of the International Union and the Auxiliary. (Exhibit E)

(8) The Preident of the Ladies Auxiliary neglected the Canadian Auxiliaries, and in many instances did not even answer correspondence. (Exhibit F)

(9) All efforts of the International Executive Board to obtain compliance of the Ladie Auxiliary Constitution have been fruitless, and with the continuance in office of Mary Orlich, with her illegal machine control, no possible compliance can be seen in the near future. Therefore, the Committee recommends to the Executive Board of the International Union of Mine, Mill & Smelter Workers:

(a) That a new Ladies Auxiliary of the International Union of Mine, Mill & Smelter Workers be organized, and that from this date forward the Ladies Auxiliary dominated by Mary Orlich will not be recognized by the International Union, and that the use of the name "Ladies Auxiliary of the International Union of Mine, Mill & Smelter Workers" be henceforth denied to that organization, and that all rights and privileges previously granted be revoked.

(b) That all present locals of the Ladies Auxiliary desiring to remain loyal to the International Union cease sending per capita tax to the former Auxiliary and that the usual per capita tax of 10¢ per member be sent to the International Secretary-Treasurer of the International Union to be held in escrow until such time as new officers of the Auxiliary can be elected.

(c) That the International President issue a letter to each Auxiliary local certifying their right to function as a provisional local auxiliary until a Constitutional Convention of the re-organized Auxiliary can be held.

(d) That Mary Orlich and ther officers of the former Ladies Auxiliary of the International Union of Mine, Mill and Smelter Workers be instructed to return to the International Union all charters, books, papers, documents, etc., bearing the name of the Ladies Auxiliary of the International Union of Mine, Mill & Smelter Workers, and that certified audit be provided the International Union of the moneys provided by the International Union to the Auxiliary.

(e) That a Provisional Organizing Committee be established, consisting of: Five Auxiliary members loyal to the Constitution of the International Union of Mine, Mill & Smelter workers. This Provisional Committee is established to re-organize a Ladies Auxiliary of the International Union of Mine, Mill & Smelter Workers. This Provisional Committee will function as the Provisional Executive Officers until such time as a Constitutional Convention can be held. The Chairman of the Provisional Committee shall have the authority to act for the local Auxiliaries.

(f) That the Congress of Women's Auxiliaries be notified of these decisions and that Mary Orlich no longer represents the Ladies Auxiliary of the International Union of Mine, Mill & Smelter Workers, and requesting of the C. W. A., that she be removed from the Executive Board and that an Auxiliary member selected by the Provincial Committee provided for in (e) above shall take her place to represent the Ladies Auxiliary of the International Union of Mine, Mill and Smelter Workers on the C. W. A. Executive Board.

Respectfully submitted,
(S.) FRANK CLARK,
Chairman,
MIKE STARR,
ERNEST H. LOVE.

Brother Clark stated that the defendants, Mrs. Orlich and Mrs. Young, have been given every opportunity to present themselves in their own defense, through registered letters and wires notifying them on the date of the Trial Committee Hearing in Chicago, and through wires sent out at the beginning of the Board meeting advising them that the Board would act on the recommendations of the Trial Committee on Saturday, February 21st, and asking them to be present, if they so desired, to question the report of the Committee. However, neither of the defendants has answered any of the communications sent to them, and have failed to appear.

There was some discussion as to the proper methods of chartering the numerous groups which have requested auxiliary charters. It was agreed that until the Auxiliary functions normally again the International should issue temporary certificates to all existing and now auxiliary chapters.

* * *Motion by Brother Eckert, Seconded by Brother Powers, to concur in recommendations of Auxiliary trial committee and the National Officers proceed to carry out recommendations. Motion carried.

* * *Motion by Brother Travis, Seconded by Brother Carlin, that the Board concur in legislative program adopted by Mining, Smelting and Refining conference and also concur in the Canadian legislative program submitted by Brother Carlin calling for an improved labor relations act and workmen's compensation law in Canada. Motion carried.

Brother Harold Sanderson reported on the Allied Industries Council, pointing out that the 1946 convention of the International Union had called for the establishment of such a council. He stated that there were approximately 120 plants which would be involved in such a council not counting those in the amalgamated casting locals. He stated that locals which should comprise such a council do not now fall within the confines of any of the existing company or industry-wide councils. He stated that they could be divided into groups, such as clay and brick, chemicals, explosives, fertilizer and just general metal plants. He stated that in some areas they might be able to bargain pretty effectively on an area basis, and that no purpose would be served in holding any nation-wide meeting of all allied industry locals because of their diversity of interests.

Brother Travis recommended that in view of the complex situation with regard to the unifying of all of the allied industry locals that the International should begin immediately to establish a form of communication among the plants or operations of a specific section of the al-

lied industry group. The coordinator of the Allied Industries locals should keep in touch with these locals on an indutry basis, that is, keep all of the explosives locals advised of negotiations, etc., in their industry, but at the present time, no large scale meetings should be planned.

* * *Motion by Brother Travis, Seconded by Brother Van Camp, that an Allied Industries Coordinator be designated and that the National Officers appoint this coordinator. Motion carried.

The question of a Job Evaluation Committee for the Mining, Smelting and Refining sections of our industry was also discussed.

* * *Motion by Brother Eckert, Seconded by Brother Van Camp, that the National Officers Appoint such a Committee to make a Job Evaluation Study in the Mining, Smelting and Refining Sections of our Industry and that the Board Members make recommendations to the National Officers for this committee, which should consist of five members. Motion carried.

* * *Motion by Brother Eckert, Seconded by Brother Pezzati, that the International Union reimburse casting division in the amount of $77.00 to defray part of the expenses incurred in recent casting conferences in Chi-cago. Motion carried.

President Clark then asked to be excused from the meeting because he had been notified that his wife was ill and he was catching a plane to arrive in Chicago as soon as possible. Brother Clark thanked the Board members for their cooperation in his first Board meet-

888

"D-33" (Revised)

DUPLICATE

EXPENSE ACCOUNT

International Union Mine, Mill and Smelter Workers

THIS COPY MUST BE THE SAME AS THE ORIGINAL AND IS TO BE MAILED TO THE BOARD MEMBER

District No. 2 Period Ending 15 Feb 44

DATE	TRANSPORTATION FROM	TRANSPORTATION TO	AMOUNT	EXPENSE ALLOWANCE
Feb 1	Malden	Bingham	40	
2	"	Bingham, Copperfield	44	
3	"	Bingham	40	
5	"	Bingham, Park	55	
6	"	Bingham	40	
7	"	"	40	
9	"	"	40	
10	"	"	40	
11	"	"	40	
12	"	"	40	
13	"	"	40	
12	"	"	40	
13	"	"	40	
		TOTAL	428	

NOTE—All accounts must be rendered semi-monthly to the Secretary-Treasurer.
Pay periods are from the 1st to 15th, inclusive, and from 16th to 30th, or 31st, inclusive.

Expense accounts must be filled in each day.

Receipts for all expenditures listed must be sent in with expense account.

If receipts are not received, no payment will be made.

Only ordinary expenses will be reimbursed.

No receipts are necessary for transportation by auto (4c a mile).

Telephone and telegraph bills must be listed in detail on back of this sheet. If this is not done, the bills will not be paid. Phone calls from pay booths must be so listed.

Expense allowance will not be allowed unless employee is away from home station over night.

No staff member may incur expenses beyond those allowed by International Union.

Fill in columns at right.

Signature James E Peterson

Where Check Should be Sent 45 Main Bingham Utah

Approved by Orville Larson

(Over)

AMOUNT DUE	
1. Salary	
2. Expense Allowance	
3. Transportation	$16.92
4. Hand Bills and Bulletins	
5. Meetings Promotion Expense	
6. Postage	
7. Telephone—Telegraph	
8. Miscellaneous	
TOTAL	
DEDUCTIONS	
1. Social Security—State Unemp. Tax	
2. Advances	
3. War Bonds	
4. American-Allied War Relief	
5. Government Tax	
6. Group Insurance	
TOTAL DEDUCTIONS	

889

Exh D "D-33" (Reverse)

TELEPHONE CALLS

DATE	FROM	TO	REASON FOR THE CALL	AMOUNT

890

ORIGINAL "D-34" front

EXPENSE ACCOUNT

International Union Mine, Mill and Smelter Workers

District No. 2 Period Ending 29 Feb 1948

DATE	TRANSPORTATION FROM	TO	AMOUNT	EXPENSE ALLOWANCE
2-16	Midvale	Bingham	40	
21	"	"	40	
23	"	"	40	
24	"	"	40	
25	"	"	40	
27	"	Park City S.L.	45	$1.11 + $1.00
28	Park City			~~$1.11 + $1.00~~
		TOTAL	245	

NOTE—All accounts must be rendered semi-monthly to the Secretary-Treasurer. Pay periods are from the 1st to 15th, inclusive, and from 16th to 30th, or 31st, inclusive.

Expense accounts must be filled in each day.

Receipts for all expenditures listed must be sent in with expense account.

If receipts are not received, no payment will be made.

Only ordinary expenses will be reimbursed.

No receipts are necessary for transportation by auto (4c a mile).

Telephone and telegraph bills must be listed in detail on back of this sheet. If this is not done, the bills will not be paid. Phone calls from pay booths must be so listed.

Expense allowance will not be allowed unless employee is away from home station over night.

No staff member may incur expenses beyond those allowed by International Union.

Fill in columns at right.

Signature James E. Peterson

Where Check Should be Sent 45 Main St. Brighton

Approved by Orville Larson

(Over)

O.K. D. TRAVIS

AMOUNT DUE	
1. Salary	
2. Expense Allowance	9.00
3. Transportation	10.91
4. Hand Bills and Bulletins	
5. Meetings Promotion Expense	
6. Postage	
7. Telephone—Telegraph	15.99
8. Miscellaneous	
TOTAL	$35.90
DEDUCTIONS	
1. Social Security—State Unemp. Tax	
2. Advances	
3. War Bonds	
4. American Allied War Relief	
5. Government Tax	
6. Group Insurance	
	D 4
TOTAL DEDUCTIONS	

ing as President of the Union and congratulated the Board on the important and far-reaching decisions made at this meeting. He stated that all of the officers and Board members should proceed immediately to implement the decisions and actions of the Board as soon as they got home. (Applause)

Brother Madill then took over the chair for the balance of the meeting.

Brother Skinner was called upon to give a report on the several steps which must be followed up to put into action the policy adopted indorsing Wallace.

Brother Skinner stressed the point that all organizers must take political action work seriously and must assume responsibility for seeing to it that the registration of all members and their families is completed. He stated that organizers must see that each local union sets up Registration Committees to put this into effect.

Brother Skinner stated that all staff members must work with all other groups in support of progressive candidates for office, and that political action for the next several months must be among the foremost tasks of the staff. He urged the Board members to check up on the organizers in their districts to see that they carry out the program of the Board, and said that once each month, each staff member should send into the International Office a complete report, local by local, of the political activities which he is in charge of.

Brother Skinner reported on the scheduled April 10th conference in Chicago for Wallace and urged that as many delegates attend from our locals as possible. He

also reported that the official convention would be held in mid-summer.

With regard to fund-raising, Brother Skinner requested the Board to grant authority to the three-man committee on political action in the union, Brothers Clark, Clott and Skinner, to proceed with arrangements and work out plans for a nation-wide fund drive. Brother Skinner requested permission from the Board to proceed to publish a political action pamphlet of four pages in Spanish, to be distributed to all of the Spanish-speaking members in New Mexico, Arizona, Texas, Utah and Colorado.

* * *Motion by Brother Robinson, Seconded by Brother Douglas, to adopt the report and recommendations in Brother Skinner's report. Motion carried.

Brother Powers suggested that the report be sent out immediately to all staff members and locals. Brother Skinner stated that this would be done.

* * *Motion by Brother Robinson, Seconded by Brother Powers, that the Political Action Committee be commended for their hard and persevering work. Motion carried.

* * *Motion by Brother Robinson, Seconded by Brother Powers, to Adjourn. Motion carried.

Meeting adjourned sine die at 12:15 p. m.

On Cross-Examination: (Cont'd)

Questions by Mr. McTernan:

Q. Now, does this refresh your recollection, Mr. Petersen, that this we have been calling the second conference in Salt Lake City was held February 16, 1948?

A. In all probability that is true.

Q. That is your best recollection at present time, isn't it?

A. Yes, that is correct.

Q. And that meeting went on for two or three days, did it not—well, don't answer that quetion, I will withdraw it.

A. Well, I believe that is correct.

Q. I don't want to ask a question unless I can make it precise. (Looking through exhibit) Looking through this, Mr. Petersen, I notice that the Wage Policy Committee meeting was held starting on February 16th, you notice that? (Indicating)

A. Yes.

Q. And then there is an entry for "Tuesday, February 17", you notice that (indicating), on Page 3?

A. Yes.

Q. And then I direct your attention to Page 11, indicating that the meeting on February 17th adjourned and on Wednesday, February 18, there was convened a meeting of the National Executive Board. Does that refresh your recollection that the Wage Policy Conference, including the representatives of the Mining, Smelting and Refining, met for two days, on February 16 and 17, 1948?

A. That is probably true, all right.

Q. That is your best recollection, isn't it, Mr. Petersen?

A. Yes.

Q. Now, Mr. Petersen, as I get your testimony now, it was in connection with this meeting that there was convened this so-called Communist Party meeting in a room in the swanky Hotel Utah, is that correct?

A. That is correct.

Q. And that the participants in that meeting were delegates to the conference indicated in Defendant's Exhibit 32, or were International Officers of the union?

A. Or International Representatives.

Q. Or International Representative. So that what we have here, if we get your testimony correct, is that there was a meeting of union representatives, consisting of delegates to the meeting—the union meeting, now—

A. Yes.

Q. —or International Officers, or International Representatives?

A. Right?

Q. And that some of these participants in the union meeting convened in the Swanky Hotel Utah as a Communist Party meeting, is that right?

A. That is correct.

Q. And you were a delegate to or International Representative present at the meeting on February 16 and 17?

A. Yes.

Q. And Jencks was?

A. Yes.

Q. And the two of you went over to the Hotel Utah?

A. I didn't walk over with Jencks, no.

Q. I don't mean that you went over with him, but you met him there at this Communist Party meeting in the swanky Hotel Utah?

A. In the swanky Hotel Utah, yes.

Q. Now, going up to Utah—or, excuse me, going up to Salt Lake for the purposes of this meeting February 16 and 17 was union business, wasn't it?

A. That was the purpose of the meeting, right?

Q. And your going up there was going on union business, wasn't it?

A. I was already there. I was stationed there.

Q. Well, weren't you living in Midvale at the time?

A. I believe so.

Q. Didn't you travel from Midvale to Salt Lake to go to the conference?

A. Oh, yes.

Q. And when you travelled from Midvale on union business you were asking the union to reimburse you for mileage?

A. Yes, I got mileage.

Q. And you put in regular expense vouchers every two weeks, isn't that correct?

A. Yes.

Q. And you honestly and accurately set forth in those expense vouchers the point to which the point from which you travelled, didn't you, Mr. Petersen?

A. That is correct.

Q. And a review of those vouchers would show where you were and the place to which you travelled each day, wouldn't it?

A. It should, yes.

Q. And you have no hesitation in saying that you prepared those vouchers as accurately and as completely as you could, have you?

A. That is correct.

Q. So that if you travelled from Midvale, Utah to Salt Lake City, Utah, to attend this conference you would, in the normal course of your business, have made an

entry in your expense voucher and claimed mileage for it, wouldn't you?

A. That is correct.

(At this point two instruments were marked "D-33" and "D-34")

Q. I show you Defendant's Exhibit 33-for-identification. Is that your expense account or expense voucher for the two-week period ending February 15, 1948, and bearing your signature?

A. Yes, this is my handwriting.

Q. And that is your expense voucher for that period, isn't it?

A. Yes, that is correct.

Q. I show you Defendant's Exhibit 34, is that your expense voucher, bearing your signature, for the two-week period ending February 29, 1948?

A. Yes, that is my writing. That is my signature.

Mr. McTernan:

We offer Defendant's Exhibits 33 and 34 in evidence.

The Court:

Pass them to opposing counsel.

(Mr. McTernan shows same to Mr. Herring)

Mr. Herring:

No objection.

(Defendant's Exhibits 33 and 34 were thereupon received in evidence and photostatic copies of same appear on pages following)

Y&CO "D-34". Reverse

TELEPHONE CALLS

DATE	FROM	TO	REASON FOR THE CALL	AMOUNT

Q. Now, Mr. Petersen, on Defendant's Exhibit 33 (indicating), you asked for transportation from Midvale for February 1, 2, 3, 5, 6, 7, 9, 11, 12, and 13, didn't you, from Midvale?

A. Yes.

Q. But not to Salt Lake for anyone of those days, did you?

A. No, it isn't on there.

Q. Now, on Defendant's Exhibit 34 (indicating), you entered transportation from Midvale on February 16th to Bingham, didn't you?

A. Yes.

Q. And on February 21st from Midvale to Bingham, didn't you?

A. That is right.

Q. And February 23rd, Midvale to Bingham?

A. That is correct.

Q. And February 24th, Midvale to Bingham?

A. That is correct.

Q. And February 25th, Midvale to Bingham?

A. That is correct.

Q. And February 27th, Midvale to Park City?

A. That is correct.

Q. Now, none of those places is in Salt Lake City?

A. No, they are close, however.

Q. And for February 28th you entered transportation from Park City to Salt Lake City, isn't that correct?

A. That is correct.

Q. But that was after the conference was over, isn't that right?

A. Evidently so.

Q. In view of what you entered on your expense vouchers and signed your name to as being accurate and complete, do you still say you attended the meeting on February 16 and 17 at Salt Lake?

A. I certainly do.

Q. Now, you say Mr. Gately attended that meeting, don't you?

A. I did.

Q. Looking at the minutes, do you find Mr. Gately's name entered as one of those who attended?

A. Mr. Gately was not a delegate. He was an International Representative.

Q. There are entries for other people who attended who weren't delegates, aren't there?

(Witness looks through Exhibit "D-32")

A. I don't see Gately's name.

Q. And you do see a list of names of people that attended but not as delegates, don't you, down at the bottom of the page? (Indicating)

A. Yes.

Mr. McTernan:

Did the jury hear an answer?

A. Yes, I did.

Q. And do you see Mr. Hanen's name entered as a delegate to that meeting?

A. No, I don't.

Q. Nor do you see him entered as a person attending the meeting although not a delegate?

A. No, I don't.

Q. But you claim that both Gately and Hansen were there?

A. That's right. I do.

Q. And do you see Jencks' name entered as a delegate to that meeting?

A. No.

Q. Nor do you find his name entered as a person who attended that meeting although not a delegate?

A. I don't see Jencks' name on here.

Mr. McTernan:

No further questions, Your Honor.

On Re-Direct Examination.

Questions by Mr. Herring:

Q. Mr. Petersen, on this Exhibit No. 32 that Mr. McTernan showed you; does your name appear on there?

A. Let me look at it.

Q. Check it, please. (Hands same to witness.)

A. No.

Q. You are positive you were there?

A. Oh, yes, I was there.

Q. Mr. Petersen, did you take down the names of all the people that were at that meeting, or conference, or convention?

A. No, I didn't take down any names.

Q. You know who did?

A. No, I don't know who was assigned to keep track of who was there.

Q. Do you know who kept the minutes?

A. No.

Q. Since 1948, have you seen what counsel has showed to you as Defendant's Exhibit 32 since that time?

A. Have I seen it since then?

Q. Yes?

A. No.

Q. You know in whose possession it has been in?

A. No.

Mr. McTernan:

I will advise counsel it has been in the official files of Mine-Mill. It is part of their official records.

Mr. Herring:

Thank you. I figured that.

Q. Do you know who wrote up these minutes?
A. No.
Q. You know whether they are correct or not?
A. No, I don't know if they are correct or not.
Q. Well, your name, you say, doesn't appear here?
A. No, it doesn't.
Q. Well, are they correct in that respect?
A. I was there.
Q. So they are incorrect in that respect if your name is not here?
A. That is correct.

Mr. Herring:

That is all.

On Re-Cross-Examination.

Questions by Mr. McTernan:

Q. After you read these minutes did you ever communicate with the National Office and tell them that the minutes were incorrect?
A. I don't remember ever doing that.
Q. You never complained that your name had been omitted?
A. Not that I remember of.
Q. Now, these minutes dealt with an area in the country with which you were primarily concerned, isn't that right?

A. That is right. Utah, Salt Lake City.

Q. And they dealt with a subject matter in which you were primarily concerned in your work in Utah?

A. If they dealt with bargaining, they did. I haven't read those minutes lately.

Q. Well, do you remember telling me a few minutes ago that you recall it dealt with matters in connection with the National Wage Policy Committee?

A. That was a meeting called for that purpose.

Q. And that was of great concern to you in your work, wasn't it?

A. That is true.

Q. Mr. Petersen, did you ever obtain money under false pretenses?

A. No.

Mr. McTernan:

No further questions.

Mr. Herring:

That is all.

* * * * * *

(Witness excused).

(At this point counsel for both sides approached the bench and conferred with the Court, in a low tone of voice, as follows):

Mr. McTernan:

I assume, Your Honor, that Mr. Ford is present and available though he is not in the Courtroom. I am going to make a request for production of the F. B. I. reports and we can stipulate, can't we, that we can oper-

ate as though he were on the stand so that there won't be any technical difficulty about it? I am just doing it this way to save time, since I have reason to anticipate Your Honor's ruling.

The Court:
Is there any objection to that stipulation?

Mr. Herring:
Stipulating what your reqest will be?

Mr. McTernan:
No, that the request that I am going to make to the Court may be deemed to be made with the witness on the stand.

Mr. Herring:
That is all right.

Mr. McTernan:
At this point we move for an order directing an inspection of reports of the witness Ford to the Federal Bureau of Investigation dealing with each of the meetings which he said that he attended with the defendant Jencks in the years 1948 and 1949. I could specify those, Your Honor, but I think that is probably clear enough.

The Court:
Yes, I think so.

Mr. McTernan:
We make this motion upon the same ground or for the other reasons heretofore urged in connection with our motion pertaining to the Matusow report, and we ask that they be handled in the same way, so far as produc-

tion for your examination first, so that the confidential privilege of the Government may be protected, to the extent that it does not interefere with proper evidentiary use of the reports in this case.

The Court:
Motion is overruled.

(Resuming before the jury):

Mr. McTernan:
We have no further questions of either the witness Ford or the witness Matusow.

Mr. McTernan:
Yes, Your Honor.

Mr. Herring:
Yes, sir.

• • • • • • • • •

KENNETH ECKERT, a witness for the Government, having been duly sworn, in answer to questions propounded, testified as follows:

On Direct Examination.

Questions by Mr. Herring:
Q. Give your name, your residence, and your occupation?
A. My name is Kenneth Eckert. I live in Grosse Pointe, Michigan. My occupation is representative of the U. A. W., CIO.
Q. What is the U. A. W., CIO?

A. That is the Union of Automobile Workers.

Q. Mr. Eckert, have you ever been a member of the Communist Party?

A. Yes, I have.

Q. To the best of your recollection when did you join the Communist Party?

A. I first joined the Communist Party in 1931.

Q. Where did you join?

A. In Toledo, Ohio.

Q. Are you still a member of the Communist Party?

A. No, I am not.

Q. When did you leave the Communist Party?

A. In 1948.

Q. Under what circumstances did you leave?

Mr. McTernan:

I object to this, Your Honor, on the ground it is irrelevant and immaterial, not connected with any issue in this case.

The Court:

Objection sustained.

Q. I will reframe the question. Were you expelled?

Mr. McTernan:

Same objection.

The Court:

Sustained.

Mr. Herring:

He can't explain why he left the Party, is that the Court's ruling?

The Court:

The Court sustains the objection.

Q. All right. Mr. Eckert, during the period of time that you were a member of the Communist Party—from 1931 through 1948, did you say?

A. Yes.

Q. Did you receive any official training or schooling in the Communist Party?

Mr. McTernan:

We object to this, Your Honor, on every ground we heretofore urged with reference to remoteness. It is irrelevant to any issue in this case, not connected with the defendant Jencks. It is utterly hearsay as to him.

The Court:

What is the materiality of this?

Mr. Herring:

I am going to qualify this man as an expert Communist.

Mr. McTernan:

We request that we argue this in the absence of the jury, Your Honor.

The Court:

All right, the jury will retire.

(The jury left the Courtroom).

Mr. McTernan:

And also without the presence of the witness, Your Honor.

The Court:

All right. Mr. Witness, will you be kind enough to step out into the hall?

(The witness also retired from the Courtroom).

• • • • • • • •

After oral argument by counsel on both sides, proceedings were resumed as follows:

The Court:

The objection is overruled. At the proper time the jury will be instructed that any expert testimony is admitted for the limited purpose of proving or tending to prove, if it does, what Communism is and what the Communist Party in the United States was on April 28, 1950, and not as evidence of the guilt of the defendant, and for the jury to give such testimony the weight they think it merits. (To Marshal): You will bring in the jury and the witness, please.

(Resuming before the jury):

On Direct Examination (Cont'd).

Questions by Mr. Herring:

Q. Mr. Eckert, I believe you testified that you had been a member of the Communist Party since 1931?

A. 1931 to 1948, yes.

Q. During the time that you were a member of the Communist Party did you receive any training in the Communist Party?

A. Yes.

Mr. McTernan:

Excuse me. Perhaps, Your Honor, in order to save time, it will be understood that we have a continuing objection to this testimony based on all the arguments heretofore made?

The Court:

That is understood and let the record so show.

Mr. McTernan:

This would go not only to the argument made in connection with the last objection but also the arguments made with reference to remoteness?

The Court:

Yes.

Q. As best as you recall, Mr. Eckert, state where you received your first training, and about when, or as close as you can get it

A. Well, shortly after joining the Communist Party in 1931, I attended the classes that were held for all new members of the Communist Party, and at subsequent times, in the city of Toledo, where I had joined the Communist Party, I attended Communist Party classes from time to time between the time I joined in 1931, and 1932. In 1932, in approximately November, I was sent to the International Lenin School in Moscow by the Communist Party, where I remained as a student in the Communist school in Moscow until approximately February of 1934. On my return in 1934, I attended classes and discussion groups from time to time held by the Communist Party in Toledo. I also attended a seminar, sort of a refresher course for Communist Party leaders of the State of Ohio, held in Camp Robin Hood,

Ohio, near the city of Cleveland. I think that is about the amount of formal training I received in the Party.

Q. Did you ever hold an office in the Communist Party?

A. Yes, I held the office of Secretary Organizer in Toledo for that area, which covered all of Northwestern Ohio.

Q. About when was that, if you remember, Mr. Eckert?

A. Well, I held that position from approximately sometime in the latter part of 1934, I believe, until sometime in 1936 or 1937. I am not sure about those exact dates. Then again from about, well, late in '37 or early in '38, or rather, late in '38 or '39, I don't recall exactly which, until 1940, I again held the position of Secretary Organizer for the Communist Party in Toledo.

Q. Did you hold any other office in the Communist Party.

A. Yes, I was a member of the Communist Party's Steering Committee in the Mine, Mill and Smelter Workers Union.

Q. When was that, if you recall?

A. From 1946 until 1948.

Q. If you can tell us, Mr. Eckert, what was the last formal training you received in the Communist Party?

A. The last formal training that I can recall having received was this seminar for Communist Party leaders in Ohio held—well, during the time I was Secretary Organizer, before 1940 that was.

Q. Did you in any way, after that time, attempt to keep up with the policy of the Party in the United States?

A. I have quite consistently read the Party publications, such as "The Daily Worker", "Political Affairs", which is the official theoretical organ of the Communist

Party, and its predecessor, "The Communist"; and "The People's World" on the west coast when I happen to be in the western part of the United States.

Q. Since leaving the Party have you made any endeavor to keep up with the policies of the Party as you have done in the past?

A. Yes, I have.

Q. In what way?

A. By reading the publications I have just mentioned, "The Daily Worker", "Political Affairs", "The People's World" occasionally, and, of course, the publication of the Mine, Mill and Smelter Workers, "The Union."

Mr. McTernan:

I move to strike the last of those, Your Honor, on the ground it is not responsive and it is a volunteered statement.

The Court:

Objection sustained. The jury will disregard the last part of that about Mine, Mill and Smelter.

Q. Have you ever been a member since 1948 of a labor union?

A. Yes.

Q. What unions and about when?

A. I was a member of the Brotherhood of Railroad Trainmen from 1926 until—well, there was certain periods that I was laid off from the railroad, during which time the Brotherhood of Railroad Trainmen exempt us from paying dues for that period of time. I was laid off from the railroad in 1930, as near as I can recall, but I was a member of the Brotherhood of Railroad Trainmen 'til about 1938, with the exception of these in-

tervals that I was laid off and may have been exempted from paying dues.

Q. Were you a member of any other labor union?

A. I don't recall, with the exception of the present union I belong to, the International Union of United Automobile, Aircraft, and Agriculture Implement Workers of America.

Q. I direct your attention to the year 1947. Were you a member of a labor union at that time?

A. I was a member of the International Union of Mine, Mill and Smelter Workers. At that time I was also a member of the National Association of Die Casting Workers which later affiliated with Mine, Mill and Smelter Workers.

Q. How long were you a member of the Mine, Mill and Smelter Workers Union?

A. I was a member of the Mine, Mill and Smelter Workers from the time that the merger was made with the Mine, Mill and Smelter Workers in 1942 until 1948.

Q. Do you know the defendant, Clinton Jencks?

A. Yes, I do.

Q. Is this him (indicating) sitting here, the third man on the table?

A. Yes.

Q. When did you first meet him?

A. The first definite meeting I recall with Mr. Jencks was in 1947.

Q. 1947?

A. Yes.

Q. Were you then a member of the Mine, Mill and Smelter Workers?

A. I was.

Q. Where did you meet him?

A. At a meeting of the Communist Party Steering Committee and other key Communists in the Mine, Mill

and Smelter Workers who had been called in from various parts of the United States to attend this Communist Party meeting in the city of Chicago in 1947.

Q. Did you hold an office in the Communist Party at that time?

A. I was a member of the four-man steering committee of the Communist Party in the Mine, Mill and Smelter Workers.

Q. Please state, Mr. Eckert, what your duties were in that capacity with the Communist Party?

A. My duties as a member of the Steering Committee was to participate with the other three members of the Steering Committee in meeting with the national leaders of the Communist Party nationally in order to receive instructions pertaining to work inside the Mine, Mill and Smelter Workers and take those instructions to other Communists inside the Mine, Mill and Smelter Workers and endeavor to make the policies of the Communist Party the policies of the Mine, Mill and Smelter Workers.

Q. Do you remember, Mr. Eckert, when this meeting in Chicago took place? You stated in 1947. Can you be more accurate than that, or do you recall?

A. Well, it took place in August of 1947.

Q. Where in Chicago was it held?

A. It was held at the home of an assistant editor of the Mine-Mill paper, "The Union."

Q. You know his name?

A. Mr. Horowitz.

Q. Do you recall who presided at that meeting?

A. Yes, Mr. Maurice Travis presided at the meeting, then President of the Mine, Mill and Smelter Workers.

Q. You recall who was present at the meeting?

A. Well, in addition to Travis and myself, there were the other two members of the Communist Party Steering

Committee in Mine-Mill, Mr. Chase Powers from the West Coast, Mr. Al Skinner, then from Chicago; Mr. Jencks, from the Southwest; Mr. Dichter, from New York; Mr. Sanderson, who was an International Representative of Mine-Mill in the Chicago office; Mr. Bernard Stern, the Research Director of the Mine, Mill and Smelter Workers; and other key Communists inside Mine-Mill.

Mr. McTernan:
I move to strike that last portion.

The Court:
Objection sustained, and that part of his answer is stricken. Just have him state who was there and what their capacity was, if he knows.

Q. Mr. Eckert, the ones you named, were they the only ones present?
A. No. There was the State Secretary of the Communist Party in Illinois, and the Trade Union Secretary of the Communist Party of Illinois, who were known members of Mine-Mill.
Q. Do you remember their names?
A. Gilbert Green, State Secretary of the Communist Party of Illinois. Fred Finn, Trade Union Secretary of the Communist Party.
Q. Mr. Eckert, based on your own knowledge, were all of the members present there Communists?

Mr. McTernan:
Objection, Your Honor.

The Court:

Well, if he knows. (To witness): If you know of your own personal knowledge whether they were or not you may say so.

A. I very definitely know they were all Communists.

Q. Was this an open meeting or—

Mr. McTernan:

That is calling for an opinion and conclusion.

The Court:

Well, it is leading, at least. You may ask what kind of a meeting, whether it was an open or closed meeting.

Q. State whether or not that was—state what kind of a meeting this was, whether it was open or closed?

Mr. McTernan:

Now, Your Honor—

Mr. Herring:

I understood that was the Court's suggestion.

The Court:

Yes, objection overruled. I presume it's on the basis of whether or not the doors were closed and the public or outsiders were not invited.

A. The doors were closed. The public was not invited. It was restricted to key personnel.

Mr. McTernan:

I object to that and ask that it be stricken.

The Court:

All right, that part is stricken and the jury is instructed to disregard it.

Q. If you know of your own knowledge, was this meeting restricted to any particular people?

Mr. McTernan:

Same objection.

The Court:

Objection overruled, if he knows.

A. The meeting was restricted to members of the Communist Party.

Q. I believe you stated that Mr. Jencks was present at that meeting?

A. I did.

Q. As best as you can recall, and if you can, what was stated or said and done, and by whom, at this meeting?

Mr. McTernan:

We object to this, Your Honor, on all the grounds heretofore stated with reference to remoteness.

The Court:

So understood. If Jencks was present, though, you may state what Jencks said and did, and what was said in his presence and hearing at the meeting in which he was present.

A. Mr. Jencks spoke at the meeting in regard to the candidacy of the Western Vice-Preident of the Mine, Mill and Smelter Workers to be elected at the coming convention, and spoke in favor of Mr. Smothermon.

Mr. McTernan:

I object to this kind of description.

The Court:

Yes, state substantially what he said as best you remember.

A. Statements of Mr. Jencks, to the best of my memory, was that he favored the candidacy of Mr. Smothermon for Western Vice-President of the Mine, Mill and Smelter Workers because he was confident that Mr. Smothermon would carry out the instructions of the Communist Party, and he did not feel that the other candidate under consideration, Mr. Madill, would do so.

Q. Do you recall anything else that he said at that meeting?

A. Well, he spoke several times in the same vein.

Mr. McTernan:

I move to strike that, Your Honor.

The Court:

All right, objection sustained. The jury will disregard his last answer.

Q. Did you make any remarks there, Mr. Eckert?

A. I did.

Q. State as best you can what you said in Mr. Jencks' presence.

A. I did a lot of talking at that meeting.

Q. As best you can?

A. In this specific question, I spoke against the candidacy of Mr. Smothermon in favor of the candidacy of Mr. Madill, and stated that I believed it was absolutely necessary to preserve the integrity of the union and pre-

vent another of the secession movements that were developing, and that to accomplish that the candidate to be supported should be Mr. Madill of Salt Lake City.

Q. When did you, or did you ever see Mr. Jencks again?

A. Yes.

Q. When did you next see him?

A. I saw him sometime later in the city of St. Paul. A short time later, in August, in St. Paul, Minnesota.

Q. Did you attend any other Communist meetings at which he was present?

Mr. McTernan:

I object to this as calling for an opinion and conclusion.

The Court:

Well, if he knows.

A. Yes, I did attend additional meetings with Mr. Jencks.

Q. Please tell us when those meetings were and where they were held, as best you recall?

A. They were held in the city of St. Paul, Minnesota, in the month of August, during the convention of the International Union nof Mine, Mill and Smelter Workers, in the hotel room at the hotel where I was staying. I don't recall the name of the hotel at the moment.

Q. Mr. Eckert, if you recall, tell the jury what was said at any of those meetings, Communist meetings I am referring to now, by Mr. Jencks or in his presence?

Mr. McTernan:

Well, Your Honor—

The Court:

Yes, pin it down to definite meeting time and places as best he can.

Q. All right. I believe you stated that these meetings were held in August of 1947?

A. Yes.

Q. Do you remember about the date, or do you know?

A. I don't remember the date.

Q. Were these meetings held close together or far apart in relation to day?

A. We held a number of Communist Party meetings. One, specifically, I recall very definitely we called Mr. Jencks in—

Mr. McTernan:

Just a moment, this is not responsive, Your Honor.

The Court:

Yes, just state what was said and done.

Mr. McTernan:

I think the problem is where and when was the meeting.

Q. I believe you said the meeting was at St. Paul?

A. Yes, at the hotel where we were staying.

Q. In August, 1947?

A. Yes.

Q. I believe you stated you could not remember the exact date?

A. That is correct.

Q. All right. If you remember specifically, state whether or not Mr. Jencks was present and what he said or what was said in his presence?

Mr. McTernan:

Your Honor, we don't have a meeting identified yet. We don't have the other persons present.

The Court:

Let's get the other persons present. This is at St. Paul, Minnesota, at a hotel which he don't recall, in August of 1947. Now, who was present?

Q. Who was present?

A. Maurice Travis; Al Skinner; a representative of the Communist Party from New York City whose name I do not recall; and Mr. Jencks.

Q. You remember whether or not Mr. Jencks said anything at that meeting?

A. He did.

Q. As best as you can recall tell the jury what he said?

A. He said in reply to our question about Mr. Smothermon that again he believed that Mr. Smothermon should be supported for Vice-President of the Mine, Mill and Smelter Workers.

Q. Do you recall what anyone else said at that meeting?

A. Yes.

Q. As best you can state what was said and by whom?

A. I again repeated and offered the arguments I had of the previous meetings—

Mr. McTernan:

Now, Your Honor—

The Court:

Yes, just state what you said.

A. I said I believed it was necessary for the integrity of Mine, Mill and Smelter Workers to prevent another secession movement that Mr. Madill should be supported for Vice-President.

Q. Mr. Eckert, did you attend the Mine, Mill and Smelter Workers convention that you spoke of a while ago?

A. I did.

Q. Do you know of your own knowledge whether Mr. Jencks attended?

A. Yes, he did.

Q. Do you remember anything that he said at that convention?

A. Yes.

Q. As best you can recall state what he said?

A. He made the motion in the convention to nominate Smothermon for Vice-President of Mine-Mill.

Q. If you know of your own knowledge, why did he nominate Smothermon?

Mr. McTernan:

I object.

The Court:

Yes, objection sustained. He is not a mind reader.

Q. Mr. Eckert, did the Communist Party have different types of membership?

A. Yes.

Q. What kind of membership did you go on?

Mr. McTernan:

I object to this on the ground it has nothing to do with any issues in this case.

The Court:
Well, he says he is an officer in the Communist Party.

Mr. McTernan:
This applies to no particular time, and applies to Eckert. Who is Eckert? He has nothing to do with Jencks.

The Court:
Objection overruled.

A. Would you repeat the question?

(The reporter read the question).

Q. Go ahead.
A. My membership in the Communist Party at this time, in 1947, was a membership at large.
Q. What did that mean?

Mr. McTernan:
Objection.

The Court:
Overruled. He was an officer in the Party.

A. Membership at large was a type of membership held in the Communist Party for people occupying strategic and important positions in labor unions and other organizations where public knowledge of their membership to non-Communists would jeopardize their position in the organization.
Q. Referring to the meeting that was held in Chicago early or in August, 1947, do you know whether or not minutes were kept of that meeting?
A. Of the convention? No.

Q. No, of the meeting in Chicago, the Communist meeting?

A. Oh, no.

Q. Based on your membership in the Communist Party and experience and teachings, was it the usual rule to keep minutes of the Communist Party meetings?

Mr. McTernan:

We object to this, Your Honor. This witness is competent to testify only to what he saw or heard.

The Court:

Objection overruled.

A. The Communist Party did not help minutes. The meetings were conducted secretly and clandestinely.

Mr. McTernan:

Now, Your Honor.

The Court:

Just state what was done. You were asked if minutes were kept.

The Witness:

And the answer is no.

Mr. McTernan:

We ask that the balance of his answer be disregarded and the jury be so instructed.

The Court:

Yes, the jury is so instructed.

Q. Mr. Eckert, did you attend a Wage Conference of the union in 1948?

A. Well, I attended the International Executive Board Meeting that was held in Salt Lake City in 1948. There were Wage Conference going on of various divisions and groups in Mine-Mill prior to that. My recollection is, however, that I arrived after most or possibly all of the Wage Conferences were over, with. My recollection is that I arrived just prior to the Executive Board Meeting. I did attend the Executive Board Meeting at that time.

Q. Were you a member of the Executive Board?

A. Yes.

Q. You know who kept the minutes for that Executive Board Meeting?

A. I believe the minutes of that Executive Board Meeting—this is minutes—were kept by the wife of the Secretary-Treasurer, Mr. Travis.

Q. Have you ever sen a copy of those minutes?

A. Yes.

Q. I hand you, Mr. Eckert, what has been introduced in evidence as Government's Exhibit 32—

Mr. McTernan:

Defendant's Exhibit 32.

Q. Pardon me, Defendant's Exhibit 32, and ask you whether or not, looking at it briefly, whether or not that appears to be a copy of the minutes kept there?

A. Well, sir, this appears to be a copy of the notes kept of the minutes. There were no verbatim minutes kept. I couldn't state definitely that they are without reading the entire thing.

Q. I see. I refer your attention particularly to the list of persons attending that appears in that exhibit.

Do you know whether or not there were people attending the meetings there in St. Paul whose names do not appear there—I mean, Salt Lake?

Mr. McTernan:

I think this applies now to the period in which the witness was there, namely, the Executive Board Meeting?

The Court:

I believe that is so.

Mr. McTernan:

I believe from his testimony that he was there only for that.

Mr. Herring:

That is correct.

(Witness examines exhibit).

A. Well, Your Honor, these notes list people by days, list some of the people attending. I would have to actually go through this entire thing. I notice that for the first couple of days of the Board, that this does not begin to list all the people who were in attendance for those days.

Q. I see. As a member of the Board, how many members on that Board, Mr. Eckert?

A. I think at that time I believe there were thirteen.

Q. As a member of that Board state, if you can, what the policy of the Board was with reference to keeping exact minutes?

A. On the recommendation of the General Counsel of the Union we had ceased keeping verbatim minutes over a year prior to this.

Q. Mr. Eckert, based on your training as you have outlined it, and your position as an officer in the Communist Party, and as a member of the Communist Party, and your study of the Communist Party and reading of their official magazines or newspapers that you have testified about, what was the policy of the Communist Party as to the use of labor unions in the United States?

Mr. McTernan:

We object to this, Your Honor, on the ground this calls for a statement of expert opinion. Expert opinion is irrelevant and immaterial and incompetent in these proceedings. It is unrelated to this defendant. It is not fixed as to time and the witness' qualifications have not been stated. There is no showing that he knows anything about this, whether he has made any study of it.

The Court:

Objection overruled.

Q. Now, I am referring your attention primarily to the time that you were in the Party and through 1950?

The Court:

Let the Court interrupt to say to the jury that any expert testimony that the Court admits along the lines just inquired about is for the limited purpose of proving or tending to prove what Communism is and what the Communist Party in the United States was on April 28, 1950, and not as evidence of guilt against the defendant.

Mr. McTernan:

I take it, Your Honor, that we have another ground of objection. What conceivable materiality the position of the Communist Party in 1931 can have in connection

with this case I fail to see, and I object to this question which asks for a position over a nineteen-year period.

The Court:
Well, the Court didn't understand it to be as of 1931.

Mr. Herring:
I will reframe my question, Your Honor.

Q. Did the policy of the Communist Party with reference to labor unions change from 1931 through 1950?

Mr. McTernan:
That calls for an opinion and conclusion and we object to it.

The Court:
Well, as a member and officer, if he knows of his own personal knowledge, the objection is overruled. If he knows what the policy of the Communist Party was the objection is overruled.

Mr. McTernan:
We have the further objection that that question is so vague and indefinite and all-embracing, that no answer could be given.

The Court:
Objection overuled.

A. The strategic objective of the Communist Party is to use the trade unions for what they called a transmission belt to transmit the potential struggles of workers, to better their conditions, to transmit that to the revolutionary engine of the Communist Party aimed at

the overthrow of the Government, and the establishment of the dictatorship of the proletariat. That strategic objective has remained constant for the entire duration of the Communist movement in this country since its formation. Tactics, changes in tactics have been made from time to time, but that strategic objective of using the labor movement as a transmission belt remains the same and has been to collect every drop of dissatisfaction that workers may have to channel it into rivulets of dissension and direct it toward the revolutionary stream of the labor movement on the assumption that it would gather momentum as it goes along and eventually become a raging torrent that will wash away the foundations of this Government and make it possible for the Communist Party to accomplish their objective of establishing a dictatorship of the proletariat.

Mr. McTernan:
May we approach the bench?

The Court:
Yes.

(Before the bench, out of hearing of the jury):

Mr. McTernan:
Your Honor, on the basis of this answer, which could not be a chance answer, the prosecution obviously knew in advance what its content was to be, we move for a mistrial. We point out to you, without trying to confine our argument to this ground, that any such precautionary instructions as you have issued can have no effect in keeping the jury's attention focused on the main issue in this case, nor can it serve to help the jury evaluate this kind of testimony only for the limited purpose Your Honor indicated.

The Court:
Motion is overruled.

Resuming before the jury:

Q. The policy of the Party, which you testified to regarding labor, Mr. Eckert, was that—or, state whether or not that policy remained the same through 1950, if you know?

A. Yes.

Q. Mr. Eckert, directing your attention to the period of time during World War II, prior to the attack by Hitler on Russia, what was the policy of the Party regarding that war?

Mr. McTernan:
We object to this on all the grounds heretofore stated, plus the further ground that the history of World War II is involved in that question.

The Court:
Yes, Objection sustained.

Q. Based on your training and experience and membership; based on your having held an office in the Communist Party, and having studied the Party's literature; state what the basic policy of the Communist Party was regarding war in general?

Mr. McTernan:
Same objection, Your Honor.

The Court:
Well, if he knows what the policy was concerning war in general, the objection is overruled.

A. The policy of the Communist Party, as taught for many years back, and as reiterated recently in their official organ, is that the position of Communists in regard to war depends on whether they characterize it as a just war or an unjust war, or other terminology they use, a progressive war or a reactionary, imperialistic war; and the official Communist position on any given war depends on how they construe it to be within the limits of those definitions.

Q. If you know, Mr. Eckert, what was their position on the Korean War?

The Court:
No, we are not going to fight the Korean War. Objection will be sustained to that.

Q. Based again on your experience and your training, and membership, and upon the official positions you held in the Communist Party from 1931 through 1948, and your reading and studying since that time, tell the jury what the basic structure of the Communist Party was and is in the United States, and I would like to confine that, Mr. Eckert, to the period of time, say, from 1948 to the present time?

Mr. McTernan:
We object to this on the ground it has nothing to do with the issues in this case.

The Court:
Objection overruled, if he knows.

A. The structure of the Communist Party has been, the official Communist Party was formed on the basis of membership in ships, mills, and mines, the basic units,

or branches, as they are sometimes called. Above that is the state committees, or sometimes they are regional committees comprising a number of states. Above that is the national committee of the Communist Party, and they have within the national committee an executive committee, and what they call a political committee inside the executive committee. In addition, they have commissions set up; a trade union commission, a commission on national minorities, and a commission to cover various fields of activities in the Communist Party.

The Court:

Gentlemen of the Jury, the Court again instructs you that this so-called expert testimony is not admitted on the basis of showing, or tending to show, guilt of this defendant, but for the limited purpose of proving, if it does, or tending to prove, if it does, what the Communist Party in this country was, more particularly in April of 1950.

Q. Based again on your experience and membership and training, Mr. Eckert, state through what medium or vehicle the Communistic teachings are distributed throughout the United States?

A. Through the "Daily Workers"; through publication, "Political Affairs"; through the "People's Daily World" on the west coast; and other Party publication in addition to directives.

Q. What organization, if you know, based upon your training and experience, controls those organs?

A. The Communist Party of the United States.

Mr. Herring:

Pass the witness.

Mr. McTernan:

I hardly think it necessary, Your Honor, to tell you that this kind of testimony comes to us as a surprise. We had no notice from the indictment or from anything said by the Government as to what it was going to prove that we were going to get into this kind of evidence. We need time to prepare for this, and we need considerable time, Your Honor. This has taken us very far afield on something which we simply are totally unprepared for, and even though I have had in the course of my experience as a lawyer some experience with some of these issues, I don't have any of the documents necessary.

The Court:

What do you think, Mr. McTernan, would be a reasonable time for you to prepare for cross-examination?

Mr. McTernan:

I don't even know whether I can get the documents I need in this city. I may have to send to my office to get material I have used in other cases to conduct the cross-examination of this witness.

Mr. Herring:

Your Honor, Mr. Eckert's name was mentioned when Mr. Elfers chose the jury. It is no surprise to them.

Mr. McTernan:

It was no surprise that he was going to take the stand. It was certainly a surprise to us that he was going to be presented here as an expert to testify to all these matters which are by means settled and by no means easy. These things involve a reading and familiarity with many

many documents and an understanding of the particular period of time to which they are to apply.

The Court:

What do you think would be a reasonable time?

Mr. McTernan:

Well, let me say this, Your Honor. If I can get the things that I need, I perhaps can do it in about twenty-four hours; that is, if I get them here. If I have to send away for them it may be two or three days before they ever get here.

The Court:

Without committing yourself, Mr. District Attorney, if we should defer the cross-examination of this witness until day after tomorrow, could you proceed with something else tomorrow?

Mr. Herring:

No, Your Honor, we will be more or less finished before that time.

The Court:

Well, under the circumstances, the Court wants to be as reasonable and fair as he knows how to be, and in view of Mr. McTernan's request he is willing to give him until day after tomorrow morning, at 9:30, to complete his cross-examination of this witness. We would want to go on tomorrow with such other testimony, if any, that you have.

Mr. Herring:

Yes, Your Honor, with the understanding that after his cross-examination we may recall some of those witnesses if it is necessary.

The Court:

Oh, well, all witnesses are subject to recall if they haven't been excused.

Mr. Herring:

I mean, for direct examination before we close.

The Court:

Well, anway, under the circumstances, we will adjourn Court until 9:30 tomorrow morning for such other testimony as you might want to present. The cross-examination of this witness will be postponed until day after tomorrow, at 9:30 A. M. because the Court does think it involves issues on which counsel is entitled to a reasonable time to prepare for cross-examination.

Mr. McTernan:

Thank you, Your Honor. After the jury leaves will you remain on the bench?

The Court:

Yes. Gentlemen of the jury, you are now excused until 9:30 tomorrow morning.

(Whereupon the jury retired from the Courtroom).

Mr. McTernan:

Now, Your Honor, earlier this aftenoon I addressed to you a motion for mistrial based upon the witness' testimony concerning the Communist Party's position on labor unions. Based upon all of this testimony, from the end of that testimony down to the close of the session today, we again move for a mistrial.

The Court:

That motion is overruled.

* * * * * * * *

A recess was taken at 4:30 o'clock P. M., and upon reconvening at 9:30 o'clock A. M., January 19, 1954, proceedings were resumed as follows:

Mr. Williams:

I believe we are to call another witness now?

The Court:

Yes. At the request of the defense counsel cross-examination of the witness Eckert has gone over to tomorrow morning.

JESUS TERRAZAS, a witness for the prosecution, was recalled to the witness stand, and testified further as follows:

On Direct Examination.

Questions by Mr. Williams:

Q. Your name is Jesus Terrazas?

A. Jesus Terrazas.

Q. You are the same fellow who was on the stand here a day or two ago?

A. Yes.

The Court:

You will have to speak a little louder. That gentleman in the far corner has to hear you, all of them.

Q. And where do you live now?
A. What?
Q. Where do you live?
A. I live in Bayard.
Q. How long have you lived in Bayard?
A. I live in Bayard since 1946.

The Court:
Bayard, New Mexico? You mean Bayard, New Mexico?

The Witness:
Bayard, New Mexico,

The Court:
All right, speak a little louder.

Q. Did you ever belong to the Mine-Mill Union?
A. Yes, I belong to the Mine-Mill Union from 1946 to 1953.
Q. During that time did you know Clinton Jencks?
A. Yes, I know Clinton Jencks since he started as President of Local 890.

The Court:
Since what?

Mr. Williams:
Since he started as President of Local 890.

The Court:
Oh, all right.

Q. Did you attend the meetings at the union hall in Bayard?
A. Yes; I attend meetings several times.

Q. When did you quit attending meetings there?

A. I quit in sometimes before May. That is when I was kicked out of the union.

Q. What year?

A. 1953.

Q. Did you attend meetings there in the years 1950, '51 and '52?

A. Yes, I attend meetings there from '50, '51 and '52.

Q. In the union hall were there any newspapers put around there for you boys to read?

A. Yes, in the union hall they usually keep the International Union paper.

Q. The what?

A. The International Union paper, and the Local 890 union paper, "The National Guardian", and "The Daily People's World."

Q. Did you ever hear Mr. Clinton Jencks say anything about any of those papers, as to which one you should read?

Mr. McTernan:

I object to this on the ground it is leading and suggestive.

The Court:

The Court thinks you can ask him whether or not he heard the defendant make any statement about the publications that he mentioned in the lodge hall.

Q. Answer the question the judge propounded, will you?

A. Jencks made several speeches concerning the "Daily People's World", that that was the only paper that brings—

Mr. McTernan:

Just a moment. Your Honor, may we have a time fixed here before he gives the contents of the statement?

The Court:

Yes.

Q. About when did you hear Mr. Jencks make the statement you are talking about?

A. Well, Jencks started making these statements about the "Daily People's World" since the Empire Zinc Strike, 1950, 1951, and 1952.

Q. And what did he say?

Mr. McTernan:

We object to this, Your Honor. We are entitled, I think, to have the time fixed more precisely.

Mr. Williams:

He said he made it all during 1950, '51 and '52.

The Court:

Sounds to the Court like it is more continuing, but if he can fix the time he should do it. If it is more than once, fix the time the best you can and the best of your recollection.

Mr. Williams:

Your Honor, I submit it is impossible to say when a series of conversations occurred, one after another, all during a period of three years.

The Court:

All right, let him fix it as best he can and with regard to his best recollection.

Q. All right, as best as you can say when these conversations occurred and the general nature of them?

Mr. McTernan:
May we have one thing at a time, Your Honor?

The Court:
All right. First, when did the defendant make these statements during the period you mentioned?

A. He make those statements about "Daily People's World" all during that time, 1950, in meetings, 1951 and 1952.

Q. At meetings?

A. Yes.

Q. As best you can, state what he said about the "Daily People's World"?

A. Well, he tells us that everybody buy the paper, that was the only paper that bring out the truth to the people. The other papers were controlled by capitalists and they didn't say the truth as the "Daily People's World" did.

Q. Did you at any time hear Mr. Jencks make any comment concerning the strike or strikes between the Mine-Mill, you boys there, and in Mexico, and if so, as best you can, say when it was first?

A. Well, about a strike in 1950, Jencks made a big speech concerning it and—

Mr. McTernan:
Objection. Just a moment. I don't think this is responsive, Your Honor.

The Court:
Well, no, fix it as to the time.

Q. You said 1950?
A. Yes.

Mr. McTernan:
That is a period of one year, Your Honor.

The Court:
Can you make it more definite as to what time in 1950? If so, you should do it.

A. Well, when he made this statement concerning the war in Korea it was sometimes after July.

Mr. McTernan:
Now, Your Honor, there was nothing in that question that called for any statement about war in Korea. I move to strike that.

The Court:
Motion to strike is granted and the jury will disregard that.

Q. Did he say anything that you remember concerning the Korean War after it began; and if so, what?

Mr. McTernan:
Objection, Your Honor.

The Court:
Objection sustained.

Mr. McTernan:
I ask, in line of your ruling, which has been continuous on this, Your Honor, that Counsel be admonished to abandon this line of testimony.

The Court:

Yes, we will not go into the Korean War. That is a controversial subject.

Mr. Williams:

I am not going into the merits of the war. I am going to follow up Mr. Matusow's testimony almost verbatim, and it will be things that directly concern the Communist Party and the Communistic effort according to Mr. Matusow.

Mr. McTernan:

I submit that statements like this ought not to be made in the presenc of the jury. If counsel wants to argue these facts it should be done to the Court alone.

The Court:

Objection sustained as to statements of the Korean War. If it is anything about the Communist doctrines or practices, or anything that Jencks said there on that occasion, the Court will admit it.

Q. During the year 1950, and after the Korean War began, did you hear Mr. Jencks make any statements concerning the United States war effort in any way?

Mr. McTernan:

I object to this on the ground it contravenes Your Honor's ruling; and I also object, Your Honor, on the ground that counsel is leading this witness. The witness has so far fixed this purported statement only in the year 1950, and now counsel is leading him as to the precise date.

The Court:

Yes, the Court sustains the objection.

Mr. Williams:

Your Honor, I am asking after a certain event happened did he hear anything said.

The Court:

Why not ask him if Jencks made any statements at the union hall, and if so, what he said?

Mr. Williams:

That is what I am asking.

The Court:

But you are leading him.

Mr. Williams:

(To reporter). Read the judge's question.

The Reporter (Reads):

"Why not ask him if Jencks made any statements at the union hall, and if so, what he said?"

Mr. McTernan:

Your Honor, can't we have the time fixed?

The Court:

Yes, fix the time.

Mr. Williams:

Will you ask him to fix the time?

The Court:

All right, the Court will ask him. (To witness): When in 1950, if you remember, did Jencks make any statement or speeches at union meetings where you were present?

The Witness:

Concerning to what?.

The Court:

Well, concerning Communism. Well, let's find out first what he said, if he said anything. The Court don't want to lead you anymore than he wants counsel to lead you. What did Jencks say at those meetings, if he said anything, can you answer that?

The Witness:

Do I have to mention what?

The Court:

The substance of what Jencks said, as best you remember.

Mr. Williams:

Concerning the war effort. You've got to direct the witness' attention to that. He can't give the whole speech.

Mr. McTernan:

We object to anything dealing with the war effort on the grounds heretofore urged to Your Honor, and I understand—

The Court:

The Court has ruled, and he adheres to that ruling, that we are not going to fight over that controversial issue over which a lot of good people disagree. If he made any statements there regarding the war effort or what the United States was doing at that time, why, it might be admissible.

Mr. Williams:

That is exactly what I had in mind.

Mr. McTernan:

I submit it is not admissible. That will open up the whole question of the war, what people thought about it, the right of people to comment on it, the right of people to take positions. I submit that we are going to make a trial within a trial of a subject that has no place in the Courtroom whatsoever.

The Court:

No, the Court agrees with counsel.

Mr. Williams:

I want to back up what Mr. Matusow said.

Mr. McTernan:

I object to counsel making these statements in front of the jury. I ask that you instruct the jury to disregard the last statement.

The Court:

The jury will disregard the last statement of counsel. (To witness): Now, what did Jencks say connected with Communism or the Communist Party at any of these meetings? We will confine it to that.

The Witness:

Well, that related to Communism Jencks made a speech in 1950, sometime after July, that they were planning a strike to stop the Korean War. It was to make a nationwide strike.

The Court:

When was this?

The Witness:
It was sometimes after July.

The Court:
1950?

The Witness:
1950.

Mr. McTernan:
I move to strike this on the grounds I have already urged to the Court.

The Court:
The Court sustains the objection about the Korean War.

Mr. McTernan:
And I ask that the jury be instructed to disregard it.

The Court:
Yes, the jury will disregard the last question and answer.

Mr. McTernan:
May we approach the bench?

The Court:
Yes.

(Before the bench, out of hearing of the jury):

Mr. McTernan:
Your Honor, this is a subject on which precautionary instructions can serve no useful purpose. They cannot

assist the jury in keeping its mind on the real issue or overcome the highly inflammatory and damaging effects of this kind of testimony, and I therefore move at this time for a mistrial.

The Court:
Motion is overruled.

Mr. Williams:
I ask you to hear this witness out of the presence of the jury and I will connect it up with Matusow's testimony where he said that Jencks said he was going to do it for the Communist Party. Now, what he does for the Communist Party, isn't it admissible?

The Court:
No, the Court has ruled several times about the Korean War.

Mr. Williams:
Even though he said that Jencks said it was for the Communist Party?

Mr. McTernan:
Matusow didn't say that.

Mr. Williams:
Yes, he did. I've got the testimony right here (indicating).

Mr. McTernan:
Matusow testified about some arrangement whereby the expiration date of the contracts in the American properties and the contracts in the Mexican properties

would be more or less simultaneous. There wasn't a word said by Matusow about strike or planning a strike.

Mr. Williams:

Let me read from it: (reads.) "I then asked him what he and other Communists in New Mexico were doing in relation to the Stockholm Ptace Appeal and the fight to put an end to the Korean War."

The Court:

The Court remembers that testimony.

Mr. McTernan:

That's Matusow's question to Jencks. Jencks didn't say anything about a strike.

Mr. Williams:

Read it, Your Honor. (Hands same to Court.)

The Court:

The Court adheres to his ruling about the Korean War. If you've got anything about strikes or termination of contracts, or affiliation with Mexico, that is a different proposition.

(Resuming before the jury):

Questions by Mr. Williams (Cont'd):

Q. In the speech that you have mentioned, did Mr. Jencks say anything about the affiliation between you boys and the Mexican mining people, and if so, what was it?

Mr. McTernan:

I object, Your Honor, on all the grounds heretofore urged, plus the fact that it is leading and suggestive.

The Court:
Objection overruled.

A. On this same meeting Jencks made a speech that they were going to make a nation-wide strike in order to stop the—

Mr. McTernan:
Your Honor, I move—

The Court:
(To witness). Leave out any reference to the Korean War.

Mr. McTernan:
I renew my last motion.

The Court:
Same ruling. Motion overruled. Just state, leaving out any referenec to the Korean War, what he said about strikes, if anything.

A. He said they were going to have a meeting with some union officials from Mexico in order to strike both places, the United States and Mexico, at the same time because the war at Korea—

The Court:
No, you will please not mention that anymore. The jury will disregard that last answer.

Mr. McTernan:
I renew my last motion?

The Court:
Same ruling. Motion is overruled.

Q. Are you a member of the society generally referred to as "ANMA"?
A. Yes, I was a member of the ANMA.
Q. When did you join it?
A. I don't recall if it was 1948 or '49.

Mr. Williams:
Your Honor, I want to approach the bench to tell you what question I want to ask.

The Court:
All right, let other counsel approach the bench also.

Mr. Williams:
It is relative to the war.

Mr. McTernan:
What is the use of approaching the bench if counsel is going to make these inflammatory remarks? I again renew my last motion.

The Court:
Motion overruled.

(Before the bench, out of hearing of the jury):

Mr. Williams:
Judge, the witness wants to relate a speech that Jencks made at the ANMA meeting and said that "you boys, you men ought not to go to the Korean War. You ought not to let your sons go to the war. The Government may put you in jail if you don't but you will be

better off in jail than if you go into this imperalistic and capitalistic war."

The Court:
Objection to that sustained.

(Resuming before the jury):

Q. Do you know of your own knowledge whether Mr. Jencks was a member of ANMA while you were?

Mr. McTernan:
I object to this on the ground it is immaterial and irrelevant.

The Court:
The Court at the moment don't see the materiality of membership in some other organization. Objection sustained.

Q. Who was the manager of and ran, if you know, the Mine-Mill newpsaper?

Mr. McTernan:
Objection.

The Court:
Well, as a member of that union, if you know of your own knowledge, the Court will admit it.

Mr. McTernan:
We object on the ground it is immaterial and irrelevant.

The Court:
That objection is overruled.

Q. Your Local 890 Mine-Mill paper?
A. Who was the manager?
Q. Yes?
A. Well, Jencks told me a couple of times that he wanted some news from the shop stewards and the membership in order to send up the paper, to make up the news so he could send out the paper to be arranged here in El Paso. He told me at those meetings that he was editor of the paper.

Mr. McTernan:
I move to strike this, Your Honor, and I also point out that under the circumstances it is utterly unrelated as to time and place and wholly irrelevant to any issue in this case.

The Court:
The Court thinks it would be well if he knows the time.

Q. About when did he tell you these things?
A. I don't know. I can't recall the time but it was sometime during the Empire Zinc strike.

Mr. Williams:
Pass the witness.

Mr. McTernan:
May we approach the bench, Your Honor?

The Court:
Yes.

(Before the bench, out of hearing of the jury):

Mr. McTernan:

Your Honor, we move to strike the entire testimony of this witness on the ground that it is irrelevant and immaterial, and not connected with any issue in this case, and on the ground that the only portions which remain deal with the distribution of newspapers and statements by the defendant dealing with evaluation of newspapers or urging people to read same. Those are clearly unprotected activities under the First Amendment of the Constitution of the United States and can't in any way constitute the commission of a crime or any probative link in the proof of the commission of a crime. The same thing applies to the testimony that Jencks was editing a newspaper, or that he was seeking to have people prepare material. That is clearly an exercise of First Amendment liberties. To use this as proof of a crime is simply to infringe upon his liberties.

The Court:

Motion overruled.

On Cross-Examination.

Questions by Mr. McTernan:

Q. When did you become a member of Local 890?
A. Speak louder, please.
Q. You can't hear me?
A. No.
Q. When did you become a member of Local 890?
A. I signed up with the Local 890 in 1946.
Q. In 1946?
A. Yes.
Q. And where were you at that time?

A. When I signed up?

Q. Where were you when you joined Local 890?

A. I was working.

Q. Where?

A. Kennecott Copper Corporation.

Q. At what plant?

A. Hurley.

Q. Hurley, New Mexico?

A. Yes, sir.

Q. That is pretty close to Bayard, isn't it?

A. That is about four miles.

Q. And was Jencks a member of Local 890 at that time?

A. Who?

Q. Mr. Jencks?

A. I don't know if he was a member of Local 890, but in 1946, before I signed up, after a few days in 1946, Angel Bustos and Mr. Jencks were at a Cafe and then—

Q. I haven't asked you about any cafe, Mr. Terrazas. I want to know whether Jencks was a member of Local 890 at the time you joined it.

A. I don't recall if I signed before that same time, when he told me he was going to be our next president, or after.

Q. All I have asked you is whether he was a member at the time you joined. Do you know? If you don't know, say so.

A. I don't recall.

Q. Are you sure that Local 890 was in existence in 1946?

A. Was what?

Q. Do you know whether Local 890 was in existence in 1946? Do you understand my question?

(Witness shakes his head).

Q. Do you know that there was such a thing as Local 890 up there in Bayard, in Silver City, in Hurley, in the year 1946?

A. No, there was not a Local 890 then. There were units.

Q. Well, as a mater of fact, there were separate locals up there at that time, weren't there?

A. Units.

Q. Wasn't there a separate loca for Kennecott Copper?

A. No. Later they put all the units in one local, Local 890.

Q. Do you know, when that happened?

A. I don't recall the time.

Q. You remember what year that was?

A. No, I don't.

Q. Was it 1947?

A. I don't remember the year.

Q. What local were you a member of before there was a Local 890?

A. I was a member of the unit.

Q. What was the number of it?

A. I don't recall.

Q. What was the name of it?

A. It was the unit, and it has a number, and it was the International Union of Mine, Mill an dSmelter Workers. I don't recall the number of the unit.

Q. And do you recall when that unit wa consolidated with other units in that area?

A. What was it?

Q. You said that these various units up there were put into one union called Local 890. Do you remember when that happened?

A. I don't understand your question.

Q. You remember testifying a few minutes ago that you belonged to a unit at Kennecott Copper? You remember that, don't you?

A. Yes, sir.

Q. And do you remember testifying that some time or other that unit was joined with other units and became Local 890; you remember saying that?

A. Yes.

Q. Now, do you remember when that happened?

A. No.

Q. You can't even remmeber what year it happened in?

A. No.

Q. Were you a Shop Steward in that old unit there at Kennecott Copper?

A. No, I was Shop Steward for Local 890.

Q. When did you become Shop Steward for Local 890?

A. I was Shop Steward from '48, '49, '50, '51, '52.

Q. Was there a Local 890 in 1948?

A. I don't recall if it was Local 890 or not, in 1948.

Q. Was there a Local 890 in 1949?

A. I don't recall what year was it.

Q. Was there a Local 890 in 1950?

A. I don't recall what year was it when they get together all the units into one local.

Q. That isn't the question I asked you. Do you remember whether there was a Local 890 in the year 1950?

A. What was it?

Mr. McTernan:

May the question be read, Your Honor?

The Court:
Let the reporter read the question.

(The reporter complied).

A. Yes, there was.
Q. You are sure of that?
A. Yes.
Q. Wasn't that the first year Jencks was president of the local?
A. Was Jencks president of the local? Yes.
Q. No, that isn't the question I asked you. Was 1950 the first year that Jencks was president of the local?
A. Jencks was president since when they told me it was in 1946 that he was going to be our next president.
Q. I haven't asked you that question. What I wanted to know was whether 1950 was the first year Jencks was president. Was that the first year he was president or wasn't it?
A. He was president before.
Q. Was he president in 1946; "yes" or "no"?
A. In 1946 Angel Bustos told me he was going to be our next president.
Q. Just a moment. I haven't asked you about a conversation between you and Bustos or anybody else.

Mr. Williams:
Your Honor, can't he—

The Court:
If he knows it he can answer.

Q. Can't you answer "yes" or "no" to that question?
A. In 1946 that was not a local, it was a unit.

Q. When were you kicked out of Local 890, to use your words? You said you were kicked out of Local 890. When did that happen?

A. I was kicked out in 1953.

Q. Weren't you kicked out in July, 1952?

A. No, sir. I was kicked out in 1953.

Q. Was your explusion from the local reported in the union paper?

A. Sir?

Mr. McTernan:

May the question be read to the witness, Your Honor?

The Court:

Yes.

(The reporter repeated the question).

A. I don't understand that question.

Mr. McTernan:

I will reframe the question, Your Honor.

Q. When you were kicked out of the union was there a newspaper story about it in the union paper?

A. There was a story about me in the union paper.

Q. And did that story come out just about the time that you were kicked out?

A. After I was kicked out.

Q. Just after you were kicked out?

A. I don't recall if just after but after I was kicked out.

Q. Isn't it a fact that that story came out a week or two after you were kicked out?

A. I don't know how much time after.

Q. In any event it came after you were kicked out, is that right?

A. Yes.

Q. Now, you know why you were kicked out?

A. Yes, because I didn't like Communism.

Mr. McTernan:

I move to strike that.

Mr. Williams:

Can't he answer why?

The Court:

No. Counsel has this witness. You can examine him later if you wish. (To witness): Just anwer the question.

Q. You were kicked out for conduct unbecoming a union member, weren't you?

A. I was kicked—

Q. Will you answer that "yes" or "no"?

A. I was kicked out—

Q. Will you answer that "yes" or "no"?

The Court:

Answer it first and then you can explain if you want to.

A. Ask the question again.

The Court:

Read it, Mr. Reporter.

The Reporter (Reads):

"You were kicked out for conduct unbecoming a union member, weren't you?"

A. I don't understand that question.

Q. Wasn't there a rule in your union that if you had any difference or disputes with a union member you had to take it up through the union and not take the union member to Court; can you answer that "yes" or "no"?

A. I told Mr. Jencks just before—

Q. Just a moment.

The Court:

Just answer the question, if you can, whether or not there was a rule like that.

The Witness:

I have to say why.

The Court:

You can answer first whether or not there was a rule like that.

The Witness:

I have to say, my statement would be related to his question.

Mr. McTernan:

Yes, somewhere like El Paso is related to Los Angeles, Your Honor.

Q. Now, can you answer this question "yes" or "no"; was there a rule in your union, Mr. Terrazas, that when you had a dispute with a fellow union member on the job you had to take it up through the union and not take the union member to Court, can you answer that "yes" or "no"?

A. I will give the—

The Court:

Answer first whether or not there was such a rule and then the Court will let you explain. Was there a rule, if you know?

A. I don't know if there was any rule or not.

Q. You had a dispute with a man named "Provencio" on the job there at Hurley?

A. Yes, I will tell you about it.

Q. And you accused Provencio of trying to harm you on the job, didn't you?

A. Provencio—

Q. Did you accuse him of trying to harm you on the job? Can you answer that "yes" or "no"?

A. I will give you a statement on that.

Q. Will you answer the question?

The Court:

Answer the question.

A. I can't answer it unless I give a statement. He—

Mr. McTernan:

Your Honor, may the witness be directed to answer that question "yes" or "no" first?

The Court:

Yes. (To witness): If you can answer the question answer that first, please, and then you can explain.

Mr. McTernan:

Perhaps the question ought to be read again to the witness.

The Court:

Yes, read the question, Mr. Reporter.

The Reporter (Reads):

"Did you accuse him of trying to harm you on the job?

The Court:

The question is, did you accuse him of trying to harm you. You can answer that "yes" or "no" and then explain if you want to.

The Witness:

I have to give a statement to that.

Mr. Williams:

Well, answer "yes" or "no"; then you can explain. Did you "accuse" him. Answer "yes" or "non".

The Witness:

I don't understand very well the meaning of the word "accuse" him.

Mr. McTernan:

I will reframe the question if the witness is having trouble.

Q. I will change the question so that you will have no trouble with it. I take it that explanations do not involve relating the merits of this dispute.

The Court:

Well, we are not going to try that dispute. He can make a statement, if it has direct bearing upon the answer. He doesn't have to go into detail.

Q. Didn't you say that Provencio had tried to harm you on the job? Answer that "yes" or "no", please.

The Court:
Did you say that? Answer that first.

A. I said that—
Q. Can you answer my question "yes" or "no", please?
A. Yes, he tried to harm me.

Mr. Williams:
Now, can he explain his answer? He hasn't been allowed to answer a question yet.

Mr. McTernan:
I take exception to that remark.

The Court:
Yes, I think that is an incorrect statement. (To witness): Now, you have said "yes" and if you want to make a brief explanation of this, if it is direct and pertinent, the Court will permit you to do it.

A. The idea that Provencio tried to throw me down an elevator was on account of Mr. Jencks several times—

Mr. McTernan:
This is obviously not an explanation but another accusation, Your Honor?

The Court:
All right, the Court sustains the objection at this time, but the Court will give the prosecution opportunity to examine him on re-direct.

Q. Now, you took this complaint about Provencio trying to harm you to Court, didn't you?
A. I took time to the union—

Q. Will you answer that "yes" or "no"?

A. I took it to the union first. Ernie Velasquez told me to put Provencio in Court.

Q. Who was he?

A. Ernie Velasquez was president of Local 890.

Q. At what time?

A. It was in 1953.

Q. And you took this thing to Court and the union placed charges against you, didn't they, for violating the union rules?

A. I took Provencio to Court and the union put me no charge whatsoever that I know.

Q. Didn't they tell you that you were thrown out of the union because you had taken this dispute to Court instead of settling it through the union?

A. It was a discussion only.

Q. Well, you were told that, weren't you, by the union representatives?

A. I was told—

Q. Weren't you, "yes' or "no"?

A. It was a—

Q. Weren't you tol dthat you were expelled from the union because you took this dispute to Court instead of settling it through the union; can't you answer that "yes" or "no"?

A. Yes.

Q. And you have felt very hostile to Local 890 ever since, haven't you?

A. Very what?

Q. Hostile?

A. No.

Q. You understand that?

A. Yes.

Q. Haven't you felt hostile to Local 890 ever since?

A. No.

Q. And haven't you blamed Jencks for having been thrown out of the union?

A. No, sir.

Q. You don't belong to the union now, do you?

A. No, sir.

Q. Are you a foreman at Kennecott Copper now?

A. No, sir.

Q. Do you know whether the question of your being kicked out of the union was submitted to the membership for a vote?

A. No, sir.

Q. You don't know?

A. No.

Q. You don't know one way or the other about that, is that right?

A. One way or the other? What do you mean?

Q. You don't know whether it was submitted to the membership for a vote or whether it wasn't?

A. No, sir, I don't know what they did. They never let me know.

Q. Well, you read about it in the union paper, didn't you?

A. They brought up in the union paper.

Q. My question was, did you read about it in the union paper?

A. I read about it, yes.

Q. You read about it in July of 1952, didn't you?

A. No, 1953.

Q. Do you know when the Empire Zinc strike started?

A. When it start, no.

Q. Do you know whether the Empire Zinc strike was underway in the year 1950 at all?

A. No.

Q. Do you know that there was no Empire Zince strike during the year 1950?

A. I can't answer your question.

Q. Do you know what year was it when it started.

Q. Do you know that there was no Empire Zine strike

Q. You know when it ended?

A. I know. there was a strike.

Q. You do know there was a strike?

A. Yes.

Q. You feel pretty sure about that?

A. Yes.

Q. But you don't know when it happened?

A. No. It was around 1950, 1951, I understand.

Q. But you don't know when in the year 1950, if at all?

A. Sir?

Q. You don't know when in the year 1950?

A. No, I don't know.

(An instrument was marked as Defendant's Exhibit 37-for-identification and was shown to opposing counsel for examination).

Mr. Williams:

What part are you going to offer?

Mr. McTernan:

The article on the first page. (Indicating.)

Mr. Williams:

We have no objection.

Mr. McTernan:

I haven't offered anything yet. It hasn't even been identified.

Mr. Williams:
I still have no objection, Your Honor.

The Court:
All right, then, we ought to proceed in order.

Mr. Williams:
I am sorry I can't please counsel.

Mr. McTernan:
I wouldn't even ask Mr. Williams to please me.

Q. I show you Defendant's Exhibit 37-for-identification. Do you recognize that as the union paper for July, 1952?
A. I recognize the paper all right.

(Witness examines paper).

A. This is the 1952 paper, I am sure.
Q. Look at the top of Page 2 and 3, near the inside fold? (Indicating.) You recognize that as the issue of the "Union Worker" for July, 1952?
A. Ask the question again.

Mr. McTernan:
May it be read?

(The reporter read the question).

A. Yes, I do.
Q. And is that the newspaper in which you read about having been kicked out of Local 890?
A. Yes.
Q. You were kicked out in 1952 then?

A. Yes, it says right there. Now, I want to make a statement concerning to my kicking out.

Q. I haven't asked you for a statement.

Mr. Williams:

May he make his explanation?

The Court:

Not now, unless counsel asks for it.

Mr. McTernan:

No further questions.

On Re-Direct Examination.

Questions by Mr. Williams:

Q. Jesus, they have asked you what the union stated about why you were kicked out. Now, will you explain what you say about why you were kicked out?

A. Well, there was some statement I want to make to that. Jencks was making some leaflets concerning to peace and once Jencks said that the only people who could get into Russia—

Mr. McTernan:

I don't understand what this has to do with his having been expelled from the union.

The Court:

As the Court understands, he is now testifying as to what Jencks said to him about it.

Mr. McTernan:

No, about leaflets on peace. It is not tied down as to time and place or anything else.

Mr. Williams:

It is his interpretation of why he was kicked out of the union.

Mr McTernan:

That is what he says. I submit this is no forum for interpretations and surmises, and conjectures. It is no place for making speeches. If counsel wants to present definite testimony we are entitled to have the time and place and persons present.

The Court:

If you know the reason that was given of your own personal knowledge as to why you were kicked out of the union, in view of the cross-examination, you can answer that.

Mr. Williams:

Just a minute, Your Honor, they have asked him regarding what the union said as to why he was kicked out. We want to ask him as to why he say he was kicked out.

The Court:

That is what I said. If he knows why he was kicked out he can answer that.

Mr. Williams:

That is, his opinion.

Mr. McTernan:

I submit we are not submitting opinions. Is everybody produced by the prosecution an expert?

The Court:

No, but he says he was expelled. If he knows why h was expelled, from his own personal knowledge, th Court will let him answer.

Q. Why were you expelled from the union?

A. Many times we were told by Jencks that the "Daily People's World" was a good paper, and I read it my self, and I found out all it says was Communism, and there were some leaflets concerning to peace, and ne speech was made that the only people who could get into Russia were the people who were the leaders of this peace committee, and I didn't like the idea, so I just went over attacking Communism, not the Local 890 or the International Union, but the Communism itself; and then some local officials started attacking me, they say I was attacking Mine-Mill, so I just went on through fighting against Communism in the job and uch as trying to walk out for nothing, things like that.

Mr. McTernan:

I submit this has nothing to do with what he was cross-examined about. I move to strike it.

The Court:

Well, that motion is overruled, but we won't go any further into the matter.

A. And then—

Mr. McTernan:

Just a moment.

The Court:

(To Mr. Williams): Have you got any further testimony?

Mr. Williams:

He seems to want to explain his answer. I would like to hear it.

The Court:

Well, he seems to have gone to considerable extent in explaining why he was kicked out. (To witness): Have you covered that subject in your explanation, as to why you were kicked out, the statement you just made?

The Witness:

Because I fight Communism on the job.

Mr. Williams:

What was that?

The Court:

Because he was fighting Communism on the job.

Mr. Williams:

Pass the witness.

Mr. McTernan:

No further questions.

(Witness excused.)

* * * * * * * *

At this point, a fifteen-minute recess was taken, until 10:50 AM the same date, at which time proceedings were resumed as follows:

JOHN P. THOMPSON, a witness for the Government after having been duly sworn, in answer to questions propounded, testified as follows:

On Direct Examination.

Questions by Mr. Williams:

Q. What is your name, please?

A. John P. Thompson.

Q. And your business?

A. Printer.

Q. Where do you live now?

A. Just moving from Myrtle Creek, Oregon to Sutherlin, Oregon.

Mr. McTernan:

I didn't get it, Your Honor.

The Court:

Myrtle Creek.

A. I was just moving from there to Sutherlin, Oregon.

Q. Did you ever live in New Mexico?

A. Yes, sir.

Q. Where?

A. Bayard.

Q. Did you have any connnection with the local paper there called "The Union Worker."

A. Yes, sir.

Q. What did you do in respect to the "Union Worker"?

A. Printed it.

Q. What years?

A. As near as I can remember it was the early part of 1948, 1949, and the first few months of 1950.

Q. Who was editor of the paper when you printed it?
A. Clinton Jencks.

The Court:
A little louder.

A. Clinton Jencks.

(At this time an instrument was marked "G-24")

Q. Can you look at this Government's Exhibit 24 and tell when that issue was printed, if it was? (Indicating)
A. Yes, sir. It was printed in Octber, 1949.
Q. And this is a copy of "The Union Worker"?
A. Yes, sir.
Q. That you printed?
A. Yes, sir.
Q. And for whom?
A. For Clinton Jencks.

(Mr. Williams shows exhibit to Mr. McTernan)

Mr. Williams:
We are going to offer the article that is marked with pencil there (indicating).

Mr. McTernan:
Did you offer this already?

Mr. Williams:
I do formally offer, if I haven't already, that part on the last page marked with a pencil.

Mr. McTernan:
Could we ask a couple of questions of the witness on voir dire?

The Court:
Yes.

Examination on Voir Dire.

Questions by Mr. McTernan:

Q. I notice when Mr. Williams handed you this paper for you to identify he asked you if you recognized it as the October, 1949 issue, and as you were looking at it and before you identified it, he pointed to something in the paper which helped you to identify it. Can you point that out to me?

A. This article right here. (Indicating)

Q. Referring to the article in the upper right-hand corner on the fourth page of the paper?

A. Yes.

Q. Show me again, will you?

(Witness complies.)

Q. Did that article refresh your recollection that this was printed in October, '49?

A. Yes, sir.

The Court:
A little louder, please.

Mr. McTernann:

We object to the offer, Your Honor, on the ground that the material offered is immaterial and irrelevant to any issue in this case. It involves the expression of views with reference to CIO policy, the expression of which is guaranteed by the First Amendment to the Constitution. To use such expressions as evidence of the commission of crime is an infringement upon freedom of

press, freedom of speech, contrary to that Amendment. And, finally, because the portions offered are only excerpts from the longer article and are therefore incomplete.

The Court:
The Court hasn't seen the article so he don't know.

Mr. Williams:
He didn't say that it was immaterial, Your Honor.

Mr. McTernan:
That was the first ground of my objection.

The Court:
Pass it to the Clerk, please.

(The exhibit was handed to the Clerk and then to the Court.)

The Court:
Objection overruled.

Mr. McTernan:
May we offer, not as part of our proof, but part of the context of that excerpt, may we have the entire matter read, Your Honor?

The Court:
Yes.

Mr. Williams:
They have the privilege of reading any part they want of that article. I don't mind reading it but I am short-winded.

The Court:

Well, they can offer whatever they want out of it.

Mr. Williams:

I will read the part I offered, gentlemen.

(Mr. Williams then read from Exhibit "G-24" as follows:)

"The showdown is at hand. Murray has threatened to remove one third of the CIO Unions from the Congress of industrial Organizations. He has called names, and used strongarm tactics. Our International Union and its officers have swallowed a lot of guff, a lot of insults. But that is not the point. None of that is important. Now that our Union has signed the phony affidavits we can defend ourselves on a ballot in case of raids. We do not fear attack from that quarter any longer.

The sole issue now is whether national CIO unions have the right to represent their membership—"

Mr. Williams:

I am going to skip down a bit here.

Mr. McTernan:

I submit the entire thing should be read.

Mr. Williams:

I am going to read what I want.

The Court:

The Court will give counsel an opportunity to read whatever he wants from there.

Mr. McTernan:

He offered a portion. Now he wants to read a portion of a portion. Isn't the jury entitled to the whole thing?

The Court:

Yes, and you can give it to them. You can offer any part of it.

(Mr. Williams then continued reading as follows):

"'We call on National CIO to follow CIO Principles of Democracy and Representation. No Union should be Expelled from CIO for following the Policies decided by the Membership of that Union at annual Convention and Policy making Meetings. As Founders of CIO we want to stay within CIO, and continue to work for Peace and Progress. Mine-Mill is our Union and we will always be.

We, the 1600 members of Local 890 have special reason to take pride in our International Union. The Union has made the difference between peonage and citizenship in this area. Brothers, let us continue to be the best Mine-Mill members that it is possible to be.

Fraternally, Clinton Jencks, President; Joe T. Morales, Rec. Sec'y; Joe S. Campos, Fin. Sec'y; Arturo Flores; Cipriano Montoya; Jose Ramirez, Angel Bustos."

The Court:

Now, then, would counsel like to submit the balance?

Mr. McTernan:

I ask permission to read the entire thing from beginning to end, Your Honor, so the jury will have its full context.

The Court:

Yes, the Court thinks that is proper.

Mr. McTernan:

May it be stipulated that this comes from the editorial page of the newspaper, Mr. Williams?

Mr. Williams:

I don't even know that it does. The paper speaks for itself. If it is you can state that, I don't care.

Mr. McTernan:

Thank you. It appears to be from the edtorial page of the newspaper.

The Court:

Well, the newspaper has been offered in evidence, I believe.

(Mr. McTernan then read as follows):

What the next CIO Convention means to our Union.

The rank and file members of our Local Union should be prepared to face the consequences of the next National CIO Convention to be held within a few weeks. The outcome of this meeting may change our position as an affiliate of the Congress of Industrial Organization. As things stand now, Phil Murray, CIO President, plans to push our union out of the CIO. Mine-Mill will not be alone if this undemocratic, labor-splitting action is taken. Other unions, which like Mine-Mill, helped to found the CIO back in the '30's, will be expelled also.

But before we discuss our problems right at hand, let's go back a little. Let us see why labor faces such a crisis. Since the end of the war a lot has been happen-

ing. No sooner did one war end than preparations for a new one started. Price control was killed, and your wages were cut in half, because here everything you had to buy went sky-high. Then came Taft-Hartley, putting labor in chains. (We can see from the contract situation in our own district how Taft-Hartley poison works)—Along with Taft-Hartley came attacks on constitutional rights, on civil liberties—But when a country becomes war-minded none of this is surprising. 60 percent of our national income is spent on war preparations. The jig-saw puzzle of unemployment, repression, atom-bomb scare all fit together. It happened before—in Germany.

But how does all this concern us in CIO? What does it have to do with the coming CIO Convention? Brothers, it seems a long way from the political mess in Washington, D. C. to the union halls of this country. But it must be a lot closer than it seems to us here in Local 890. Some labor leaders felt so close to the administration and Wall street that they moved right into Washington—at least in their thinking. They decided that war, not peace, might be the answer to the problems of American workers. Instead of building homes,—let's blow them up! Yes, a war program means a lot of things. Your wages have not kept up with prices so you can't buy what you need, and now in the name of 'national defense' CIO suggests that your boss may need that dough more than you need a wage increase. So factories are closing, people are going on relief, and the war program goes 'rolling along.'

All of this is a bosses' program for uncontrolled profits. It is not a union program for the good of the people. And the majority of the top leaders of CIO have gone along with it.

Now let's get the picture. The Exec Board of CIO has about 33 members. There is one from each CIO union,

and the top officers elected each year at the CIO Convention. Our Union, Mine-Mill, is one of the eleven that has been following a policy of benefit to his own rank and file. These eleven unions have fought Taft Hartley the hardest, they have plugged for peace, and they have gone all out for wage increases this year. Along with Mine-Mill stand United Electrical, Radio and Machine Workers, (third largest union in the CIO) Furniture Workers, Farm Equipment Workers, Food and Tobacco Workers, Longshoremement and Warehousement, Fur and Leather Workers, United Public Workers, Marine Cooks and Stewards, Office and Professional Workers, and the American Communications Association. In addition to these out-spoken organizations there are many unions whose rank and file membership is traditionally hard-fighting. Now they are represented by "conservative leadership"; some are the Transport Workers, Maritime Union, Rubber Workers, Packinghouse Workers, Newspaper Guild, United Auto Workers and several more. These unions led great strikes, and can be counted on to fight progressively if they get the chance.

Within CIO unions have been raiding each other since Taft-Hartley was passed. Like cannibals the right-wing unions have been gobbling up chunks of militant unions. Mine-Mill has suffered greatly from the attacks of Murray's Steelworkers (a raid where Travis lost his eye) and Walter Reuther's United Auto Workers. Many of Mine-Mill's sessionists are paid pie-cards for the UAW now. Along with the raids came commands from the Murray majority of the CIO "Follow our policies or get out."

Mr. MeTernan:

Now follows the portion which Mr. Williams read.

(Continues reading):

"The showdown is at hand. Murray has threatened to remove one third of the CIO Unions from the Congress of Industrial Organizations. He has called names, and used strongarm tactics. Our International Union and it's officers have swallowed a lot of guff, a lot of insults. But that is not the point. None of that is important. Now that our Union has signed the phony affidavits we can defend ourselves on a ballot in case of raids. We do not fear attack from that quarter any longer.

The sole issue now is whether national CIO unions have the right to represent their membership—de unions have the right to form their own policies at their own conventions. It was Mine-Mill that organized these plants, not CIO. Out loyalty belongs to our own union, a union that has represented us all the way. Local unions have the right and the duty to speak for the membership; and National CIO does not have the right to speak for us!

If Philip Murray and the majority of the CIO Executive Board go along with this reckless expulsion of eleven unions the members of Mine-Mill must take care to remember the truth behind the headlines.

We call on National CIO to Follow CIO Principles of Democracy and Representation. No Union should be Expelled from CIO for following the Policies Decided by the Membership of that Union at Annal Convention and Policy Making Meetings. As Founders of CIO we want to stay within CIO, and continue to work for Peace and Progress. Mine-Mill is our Union and will always be.

We, the 1600 members of Local 890 have special reason to take pride in our International Union. The Union has made the difference between peonage and citizen-

ship in this area. Brothers, let us continue to be the best Mine-Mill members that it is possible to be.

Fraternally,"

Mr. McTernan:

And then the names read by Mr. Williams. (Hands paper back to Mr. Williams)

Mr. Williams:

That is all, I pass the witness.

Mr. McTernan:

No questions, Your Honor.

(Witness excused.)

Mr. Williams:

Your Honor, there is some question as to whether I formally introduced these different exhibits. I now introduce Government's Exhibit 1, if I have not already done so.

The Court:

All right. The Court understood it had been admitted but maybe not formally offered.

Mr. Williams:

That is what I am not sure of. I don't know whether it was formally done or not. If not, I offer it now.

Mr. McTernan:

Your Honor, if there is going to be another ruling, for purposes of our record we reiterate our objection.

The Court:
Well, the same ruling. Let that be understood.

Mr. Williams:
I will now read Government's Exhibit 1. (Reads same)

Mr. McTernan:
We object to reading anything from the reverse of that document, Your Honor, it is not pertinent to the issues here.

Mr. Williams:
All right, it is in evidence.

Mr. McTernan:
We also ask that the jury be instructed not to infer from anything that Mr. Williams read that in fact the document was signed by the defendant, Clinton Jenck.

The Court:
No. He read the document as the writing appeared thereon.

Mr. McTernan:
If and who signed it is for the jury to determine.

The Court:
Any issue of fact is for the jury to determine, yes.

Mr. Williams:
Now, I offer formally, if I have not already done so, the other Government exhibits that have seen submitted to the Court.

The Court:

They will be admitted, subject to the same objection heretofore made by counsel for the defense and same ruling.

Mr. Williams:

They seem to think some of them are not in. I am not sure. I offer Government's Exhibit 2.

Mr. McTernan:

In order to save time, if counsel wants to do this, I think it may be deemed we just stated our objections as heretofore stated.

The Court:

Yes, and that all of the exhibits which the Court has heretofore passed on are now admitted in evidence.

Mr. Williams:

(To Mr. McTernan) Mr. McTernan, may we have the original of Exhibit "G-3", which is a letter dated May 2, 1950, addressed to Clinton E. Jencks?

(Mr. McTernan handed same to Mr. Williams.)

Mr. Williams:

We have offered "G-3", which is a copy of a letter we had in our files. Now we have the original which we would like to designate as "G-3A".

Mr. McTernan:

So that our files may remain complete, we have no objection to counsel using a copy.

Mr. Williams:

I have no objection to using the original.

The Court:

Well, let it be introduced as "3-A" with the understanding that after you are through using it it will be returned to counsel for defense. Mr. Reporter, you will make a note that it be returned to Mr. McTernan.

(The document was then marked "G-3A".)

Mr. Williams:

By the substitution of a photostat.

It has a signature on it, Your Honor, and this one, this other one (indicating), doesn't.

The Court:

Well, it has been admitted.

(Exhibits "G-1", "G-2", "G-3", "G-3A", "G-4", "G-5", "G-6", "G-6A", "G-7", "G-8", "G-9", "G-10", "G-11", "G-11A", "G-12", "G-12A", "G-13", having been received in evidence, photostatic copies of all these exhibits appear on the pages following.)

978

Form NLRB-1081
(5-48)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

AFFIDAVIT OF NONCOMMUNIST UNION OFFICER

(See instructions on reverse)

The undersigned, being duly sworn, deposes and says:

1. I am a responsible officer of the union named below.

2. I am not a member of the Communist Party or affiliated with such party.

3. I do not believe in, and I am not a member of nor do I support any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods.

Int'l Longshoremen's & Warehousemen's Union, Local 890
(Full name of union, including local name and number)

International Union of Mine, Mill & Smelter Workers
(Full name of national or international union of which it is an affiliate or constituent unit)

Signature Custer E. Peake

Address Box 98
(Street)

Bayard, New Mexico
(City and State)

(The notary public or other person authorized by law to administer oaths must fill in completely all blank spaces below.)

Int'l Longshoremen's & Warehousemen's Union, Local 890
(Full name of union, including local name and number)

International Union of Mine, Mill & Smelter Workers
(Full name of national or international union of which it is an affiliate or constituent unit)

Signature Custer E. Peake

Address Box 98
(Street)

Bayard, New Mexico
(City and State)

(The notary public or other person authorized by law to administer oaths must fill in completely all blank spaces below.)

Subscribed and sworn to before me this 28th day of April 1950

A notary public or other person authorized by law to administer oaths and take acknowledgments in and for the county of Grant, State of New Mexico

My commission expires March 19, 1952

Custer E. Flores
(SIGNATURE)

[SEAL]

WARNING.—The attention of persons filing this form with the Board is directed to Section 35 (A) of the criminal code, which provides that any person willfully making or causing to be made any false or fraudulent statements or representations in any matter within the jurisdiction of the Board shall be fined not more than $10,000 or imprisoned not more than 10 years, or both.

979

"G-1" (Reverse)

INSTRUCTIONS FOR THE USE OF THIS FORM

WHO MUST FILE.—This affidavit must be filed by each officer of a labor organization before that organization may receive the help of the National Labor Relations Board. An affidavit must be on file for each officer listed in your constitution and by-laws.

WHERE TO FILE.—NATIONAL AND INTERNATIONAL LABOR ORGANIZATIONS must file this affidavit with the Affidavit Compliance Branch, National Labor Relations Board, Washington 25, D. C.

LOCAL LABOR ORGANIZATIONS must file this affidavit with the Regional Office of the National Labor Relations Board with which they usually file cases.

WHEN TO FILE.—This affidavit is good for only one year from the time it is signed and must be renewed each year. Each time a new officer is elected or appointed, he must file this affidavit. If an officer is reelected, it is not necessary to file a new affidavit unless the affidavit on file with the National Labor Relations Board is more than one year old.

HOW TO PREPARE THIS AFFIDAVIT:

a. Read carefully items 1, 2, and 3 of this affidavit.

b. Fill in the full name of your labor organization, including the local name and number.

If your organization is affiliated with a national or international organization, give the full name of the national or international.

WHERE TO FILE.—NATIONAL AND INTERNATIONAL LABOR ORGANIZATIONS must file this affidavit with the Affidavit Compliance Branch, National Labor Relations Board, Washington 25, D. C.

LOCAL LABOR ORGANIZATIONS must file this affidavit with the Regional Office of the National Labor Relations Board with which they usually file cases.

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HOW TO PREPARE THIS AFFIDAVIT:

a. Read carefully items 1, 2, and 3 of this affidavit.

b. Fill in the full name of your labor organization, including the local name and number.

If your organization is affiliated with a national or international organization, give the full name of the national or international.

(EXAMPLE)

Plastic, Button and Novelty Workers Union, Local 506

(Full name and local number)

International Ladies Garment Workers Union--AFL

(Full name of national or international)

c. The officer must sign his name in the presence of a notary or other person authorized by law to administer oaths.

d. The officer must give his full home address; be sure to give the street address, city and State.

GPO WPSO 9-1-49-50,000-26-037

980

"G-2"

AMALGAMATED BAYARD DISTRICT UNION

OF MINE, MILL AND SMELTER WORKERS

Box 436
Bayard, New Mexico

Telephones
033R4 and 910R

LOCAL 890

RECEIVED
1950

Dear Sir:

If you will forward to us a copy of the Labor Organization Registration form, we will fill it out and return it.

Very truly yours,

Clinton E. Jencks

and return it.

Very truly yours,

Clinton E. Jencks

Clinton E. Jencks, President
Amalgamated Bayard District
Union of Mine, Mill & Smelter
Workers Local 890

CEJ/cg

G-2

5-8

NATIONAL LABOR RELATIONS BOARD

Sixteenth Subregional Office
201 E. F. Miller Bldg.
504 N. Kansas St.
El Paso, Texas
May 2, 1950

CORRECTED COPY

Mr. Clinton E. Jencks, President
Amalgamated Bayard District, Local 890
Union of Mine, Mill & Smelter Workers
Box 436
Bayard, New Mexico

Gentlemen:

The following documents have been received from your organization in connection with renewal of compliance with Section 9 (f), (g) and (h) of the Labor Management Relations Act, 1947.

XX Executed affidavit (Form NLRB 1080)

XXX Executed affidavits (Form NLRB 1081)

A copy of the Department of Labor's letter indicating that your organization has re-filed the proper information under Section 9 (f) and (g) of the Act

XXX Executed affidavits (Form NLRB 1081)

A copy of the Department of Labor's letter indicating that your organization has re-filed the proper information under Section 9 (f) and (g) of the Act.

Certificate Form NLRB 1085 notifying the Board that you have furnished copies of the financial data to your members.

Your organization will be considered in compliance with the filing requirements under Section 9 (f) and (g) until October 10, 1950, and under Section 9 (h) until April 28, 1951, provided there are no intervening changes in your officers.

If your organization has an active case before the Board, we will give you 30 days advance notice, whenever possible, of pending expiration of compliance as reflected by our records. We assume no responsibility for notification as it is your obligation to keep this material up to date.

If you intend to file charges or petitions with other Regional Offices of the Board, you should notify this office as to the field offices with which you intend to file cases. Such offices will then be notified of your renewed compliance.

Very truly yours,

cc: Affidavit Compliance Officer
National Labor Relations Board
Washington 25, D. C.

_____
Officer-in-Charge

42-3

NATIONAL LABOR RELATIONS BOARD

Sixteenth Subregional Office
201 R. F. Miller Bldg.
504 N. Kansas St.
El Paso, Texas
May 2, 1950

CORRECTED COPY

Mr. Clinton E. Jencks, President
Amalgamated Bayard District, Local 890
Union of Mine, Mill & Smelter Workers
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Very truly yours,

Officer-in-Charge

cc: Affidavit Compliance Officer
National Labor Relations Board
Washington 25, D. C.

47-3A

Form NLRB-1000
(6-48)

"G-4" (FRONT)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CERTIFICATE OF UNION OFFICERS

(See instructions on reverse)

The title of all the officers and the names of all officers of the Union and the date of expiration of the term of each officer are as follows: (If you need more space, write on a separate sheet of paper, and attach it to this sheet.)

Title of Office	Name of Officer (If office is vacant, so state)	Expiration Date of Present Term Month	Day	Year
PRESIDENT	CLINTON E. JENCKS	APRIL	30,	1951
VICE-PRESIDENT	TEODORO SANTALLANA	APRIL	30,	1951
FINANCIAL SECRETARY	EMUNDO CHIP	APRIL	30,	1951
RECORDING SECRETARY	REMIJIO ARELLO	APRIL	30,	1951
TRUSTEE	ANTONIO TORRES	APRIL	30,	1951
WARDEN-CONDUCTOR	JUAN CASTANON	APRIL	30,	1951

TRUSTEE ANTONIO TORRES APRIL 30, 1951

WARDEN-CONDUCTOR JUAN CASTANON APRIL 30, 1951

I, an official of the Union, certify that this information is true to the best of my knowledge and belief.

AMALGAMATED BAYARD DISTRICT UNION, LOCAL 890
(Full name of union including local name and number)

INTERNATIONAL UNION OF MINE, MILL and SMELTER WORKERS
(Full name of national or international union of which it is an affiliate or constituent unit)

Signature Anton E. Eucks

Address Box 98
(Street)

Bayard, New Mexico
(City and State)

Date April 27, 1950

WARNING.—The attention of persons filing this form with the Board is directed to Section 35 (A) of the criminal code which provides that any person willfully making or causing to be made any false or fraudulent statements or representations in any matter within the jurisdiction of the Board shall be fined not more than $10,000 or imprisoned not more than 10 years, or both.

16—55073-1

984

"G-4" (Reverse)

INSTRUCTIONS FOR THE USE OF THIS FORM

WHO MUST FILE.—Every labor organization that wishes the help of the National Labor Relations Board must file this form. One of the officers of the labor organization should fill out this form on behalf of his organization.

WHERE TO FILE.—NATIONAL AND INTERNATIONAL LABOR ORGANIZATIONS must file this form with the Affidavit Compliance Branch, National Labor Relations Board, Washington 25, D. C.

LOCAL LABOR ORGANIZATIONS must file this form with the Regional Office of the National Labor Relations Board with which they usually file cases.

WHEN TO FILE.—There must be an up-to-date form on file with the National Labor Relations Board at all times. This form must be renewed under the following circumstances:

a. Whenever there is a change of officers of your organization.
b. After every election of union officers even though there is no change in officers.
c. Whenever the term of office of one or more of your officers changes.

If your officers are not installed immediately upon election, you should advise the appropriate office of the National Labor Relations Board, as indicated under WHERE TO FILE, when they will be installed. Under such circumstances the old officers will be considered as holding over until the new officers are installed.

HOW TO PREPARE THIS FORM.—Completely fill out the reverse side of this form as follows:

a. **TITLE OF OFFICE:**
Write in this column the exact title of each officer listed in your constitution and bylaws whether the office is vacant or not.

b. **NAME OF OFFICER:**
In this column show the name of the person occupying each of the offices listed in the first column. If any office is not filled, write the word "VACANT." If one person holds two or more of the offices, show his or her name opposite each office.

c. **EXPIRATION DATE OF PRESENT TERM:**
Write in this column the date the officer's term of office will expire. Be sure to give the day, month, and year.

HOW TO PREPARE THIS FORM.—Completely fill out the reverse side of this form as follows:

a. TITLE OF OFFICE:
Write in this column the exact title of each officer listed in your constitution and bylaws whether the office is vacant or not.

b. NAME OF OFFICER:
In this column show the name of the person occupying each of the offices listed in the first column. If any office is not filled, write the word "VACANT." If one person holds two or more of the offices, show his or her name opposite each office.

c. EXPIRATION DATE OF PRESENT TERM:
Write in this column the date the officer's term of office will expire. Be sure to give the day, month, and year.

d. NAME OF UNION:
Be sure to give the full name of your organization, including the local name and number.

e. AFFILIATION:
If your organization is affiliated with a National or International organization, be sure to give the full name of the National or International.

EXAMPLE:

Plastic, Button and Novelty Workers Union, Local 506
(Full name of local and number)

International Ladies Garment Workers Union, AFL
(Full name of national or international)

f. SIGNATURE AND ADDRESS:
A responsible officer of the organization must sign this certificate. Fill in the business address of the organization, be sure to give street address, city and State.

g. DATE:
Enter the date on which this certificate is signed.

NOTE.—If you are submitting this form for the first time, you must also submit an "*Affidavit of Noncommunist Union Officer*" for each officer listed on the reverse side of this form. The "*Affidavit of Noncommunist Union Officer*" is known as form NLRB–1081. If you are refiling this form it is not necessary that a new "*Affidavit of Noncommunist Union Officer*" be submitted for reelected officers if earlier affidavits on file with the National Labor Relations Board are less than one year old.

U. S. GOVERNMENT PRINTING OFFICE 16—55673-1

985

"G-5" (Front)

NLRB 1'22-1066
(3-50)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

DISTRIBUTION OF FINANCIAL DATA CERTIFICATE

(Submit single copy only. Before completing, read the Instructions on the back)

1. The Union has filed with the Secretary of Labor its financial report for the fiscal year ending December 31 1949
(month) (day) (year)

2. The Union has given copies of the report to all its members in the following way(s): Put an "X" in the proper box. If you gave copies to the members in more than one way, check all proper boxes.

A. [ ] We published a copy in our paper, or in a bulletin, which we distributed to all our members.

B. [ ] We sent to each local constituent unit of the Union named below enough copies for all its members, with instructions (a) to post a copy on the bulletin board or in a conspicuous place at the headquarters and meeting hall of the local, and (b) to announce to its membership at the next regular meeting that copies were ready for distribution to all members, and (c) to keep ready for distribution enough copies for all its members; which instructions have been carried out, to the best of my knowledge and belief.

C. [ ] We mailed copies to all our members.

D. [X] *(THIS WAY MAY BE USED ONLY BY LOCAL UNIONS)* We posted a copy in a conspicuous place at the headquarters and meeting hall of the local Union, and announced at a regular meeting that copies were ready for distribution to all members.

E. [ ] We used none of the above ways, but we distributed the report in the following way: (If you need more space, write on a separate sheet of paper, and attach it to this sheet.)

RECEIVED

I, an official of the Union, certify that this information is true to the best of my knowledge and belief.

Amalgamated Bayard District Union of Mine Mill & Smelter Workers, Local No. 890
(Full name of Union, including local name and number)

International Union of Mine Mill & Smelter Workers
(Full name of national or international Union of which it is an affiliate or constituent unit)

Clinton E. Jencks
(Signature)

Box 98
(Street)

Date March 20, 1950 Bayard, New Mexico
(City and State)

NOTE: You must renew this certificate each time you file your financial report with the Secretary of Labor.

986

"G-5" (Revised)

INSTRUCTIONS

1. WHO MUST FILE: Any Union which wishes to have the help of the National Labor Relations Board must file Form NLRB-1085, Distribution of Financial Data Certificate, to certify that it has given to all its members copies of the financial report filed with the Secretary of Labor.

   If the Union is a new one, and has not completed its first fiscal year, it must nevertheless file Form NLRB-1085 showing the date of the end of its fiscal year, and the way in which it will distribute its report to its members.

2. WHEN TO FILE: A Union may file Form NLRB-1085 at any time after it has given copies of its report to its members. The Union must refile Form NLRB-1085 each time it files a financial report with the Secretary of Labor.

3. WHERE TO FILE: National and international Unions must file Form NLRB-1085 with Affidavits Compliance Branch, National Labor Relations Board, Washington 25, D.C.

   Local Unions must file Form NLRB-1085 with the Regional Office of the National Labor Relations Board with which they normally file cases.

4. HOW TO PREPARE THE CERTIFICATE:

   Item 1: Fill in the date of the end of the fiscal year for which the report was filed with the Secretary of Labor.

   Item 2:

   (1) National or international Unions may use ways "A", "B", "C", or "E", or any combination of them, but must not use way "D". If the Union uses way "B", the instructions sent with the copies to the local Union must cover "(a)", "(b)", and "(c)". No less than all three are acceptable.

   (2) Local Unions may use any of the five ways or a combination of them.

   (3) If you check "E", you must remember, in describing the way you used, that

   (a) The method described must be very much like "A", "B", "C", or "D", or a combination of them.

   (b) Neither posting the report nor reading it at a Union meeting is a bona fide enough.

   (c) You must arrange to give copies of the report to all members or to make copies available to all members.

   (d) If you distribute the report in a way like "B" or "D", you may use any effective method, such as giving a copy to each member personally, or placing enough copies on a table in the meeting hall and inviting members to take one if they want it.

   (e) If you make the report available at a regular meeting of the Union, you need not search out members not at the meeting to deliver copies of the report to them.

   (f) If you hand out the report at the plant gate, shop, bunkhouse, etc., you must also announce at a regular meeting of the Union that copies are there for all members, and you must post a copy at the meeting hall, in order to take care of members who were absent from work or otherwise missed outside the meeting hall.

5. CERTIFICATION:

   a. Fill in both the name and the local number, if any, of the Union. *Example:* International Union of Mine, Mill, and Smelter Workers, Local 426.

   b. Fill in the name of the national or international with which the Union is affiliated. *Example:* International Union of Mine, Mill, and Smelter Workers, CIO.

   c. A responsible officer of the Union must sign the certificate.

   d. Fill in the street address, city, and state where the Union is located.

   e. Fill in the date on which the certificate is signed.

987

33.

Bureau

March 31, 1950

AIR MAIL

Mr. C. E. Jencks, President
Local No. 890
International Union of Mine, Mill and
Shelter Workers
Box #98
Bayard, New Mexico

Jencks:

March 29, 1950

December 31, 1949.

October 10, 1949.

WILLIAM L. CONNOLLY
Director

/gab
22839

2-6

988

U. S. DEPARTMENT OF LABOR
Bureau
DIVISION OF LABOR STANDARDS
WASHINGTON

March 31, 1950

AIR MAIL

Mr. C. E. Jencks, President
Local No. 890
International Union of Mine, Mill and
Smelter Workers
Box #98
Bayard, New Mexico

Dear Mr. Jencks:

This is to advise that as of March 29, 1950 your union has filed copies of its financial report in the form prescribed by the Secretary of Labor under the provisions of Section 9(f) and (g) of the Labor Management Relations Act, 1947.

As indicated in your report your fiscal year ended December 31, 1949. Other information on the Registration Form prescribed by the Secretary was last filed as of October 10, 1949.

Very truly yours,

William L. Connolly

WILLIAM L. CONNOLLY
Director

F4:

NOTE: This letter does not apply to certificates and affidavits under Section 9(f)(b)(2) and Section 9(h) of the Labor Management Relations Act, 1947. The National Labor Relations Board requires such certificates and affidavits to be filed with them in accordance with their instructions.

CODE NUMBER NO LONGER BEING USED

6A

989

"G-7" (Front)

Form NLRB-1081
(5-48)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

AFFIDAVIT OF NONCOMMUNIST UNION OFFICER

(See instructions on reverse)

The undersigned, being duly sworn, deposes and says:

1. I am a responsible officer of the union named below.

2. I am not a member of the Communist Party or affiliated with such party.

3. I do not believe in, and I am not a member of, nor do I support, any organization that believes in or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods.

Amalgamated Bayard District Union of Mine Mill and Smelter Workers Local 890
(Full name of union, including local name and number)

International Union of Mine Mill & Smelter Workers
(Full name of national or international union of which it is an affiliate or constituent unit)

Signature Clinton E Evans

Address Box 388
(Street)

Bayard New Mexico.
(City and State)

(The notary public or other person authorized by law to administer oaths must fill in completely all blank spaces below.)

Subscribed and sworn to before me this 15th day of October 1949

A notary public or other person authorized by law to administer oaths and take acknowledgments in and for the county of Grant, State of New Mexico

My commission expires 3/19/52

Arthur Flores
(SIGNATURE)

[SEAL]

B-7

WARNING.—The attention of persons filing this form with the Board is directed to Section 35 (A) of the criminal code, which provides that any person willfully making or causing to be made any false or fraudulent statements or representations in any matter within the jurisdiction of the Board shall be fined not more than $10,000 or imprisoned not more than 10 years, or both.

GPO WPSO 9-9-49-50,000-26-427

990

"G-7" (Reverse)

INSTRUCTIONS FOR THE USE OF THIS FORM

WHO MUST FILE.—This affidavit must be filed by each officer of a labor organization before that organization may receive the help of the National Labor Relations Board. An affidavit must be on file for each officer listed in your constitution and by-laws.

WHERE TO FILE.—NATIONAL AND INTERNATIONAL LABOR ORGANIZATIONS must file this affidavit with the Affidavit Compliance Branch, National Labor Relations Board, Washington 25, D. C.

LOCAL LABOR ORGANIZATIONS must file this affidavit with the Regional Office of the National Labor Relations Board with which they usually file cases.

WHEN TO FILE.—This affidavit is good for only one year from the time it is signed and must be renewed each year. Each time a new officer is elected or appointed, he must file this affidavit. If an officer is reelected, it is not necessary to file a new affidavit unless the affidavit on file with the National Labor Relations Board is more than one year old.

HOW TO PREPARE THIS AFFIDAVIT:

a. Read carefully items 1, 2, and 3 of this affidavit.

b. Fill in the full name of your labor organization, including the local name and number.

If your organization is affiliated with a national or international organization, give the full name of the national or international.

(EXAMPLE)

Plastic, Button and Novelty Workers Union, Local 606
(Full name and local number)

International Ladies Garment Workers Union—AFL
(Full name of national or international)

c. The officer must sign his name in the presence of a notary or other person authorized by law to administer oaths.

d. The officer must give his full home address; be sure to give the street address, city and State.

U. S. GOVERNMENT PRINTING OFFICE 16—62332-1

991

Form NLRB-1080
(6-48)

"G-8" (Front)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CERTIFICATE OF UNION OFFICERS

(See instructions on reverse)

The titles of all the officers and the names of all officers of the Union and the date of expiration of the term of each officer are as follows: (If you need more space, write on a separate sheet of paper, and attach it to this sheet.)

Title of Office	Name of Officer (If office is vacant, so state)	Expiration Date of Present Term Month	Day	Year
PRESIDENT	C. E. Jencks	April	30,	1950
VICE-PRESIDENT	Concepcion Villalobos	April	30,	1950
RECORDING SEC'Y	Jose T. Morales	April	30,	1950
FINANCIAL SEC'Y	Jose S. Campos	April	30,	1950
WARDEN	Manuel Martinez	April	30,	1950
TRUSTEE	Felipe Huerta	April	30,	1950

I, an official of the Union, certify that this information is true to the best of my knowledge and belief.

Amalgamated Bayard District Union of Mine, Mill and Smelter Workers of Local 890
(Full name of union including local name and number)

International Union of Mine, Mill and Smelter Workers
(Full name of national or international union of which it is an affiliate or constituent unit)

Signature Clinton E Jencks

Address Box 388
(Street)

Date October 15, 1949

Bayard New Mexico
(City and State)

WARNING.—The attention of persons filing this form with the Board is directed to Section 35 (A) of the criminal code which provides that any person willfully making or causing to be made any false or fraudulent statements or representations in any matter within the jurisdiction of the Board shall be fined not more than $10,000 or imprisoned not more than 10 years, or both.

16—68979-1

12-5

992

"G-8" (reverse)

INSTRUCTIONS FOR THE USE OF THIS FORM

WHO MUST FILE.—Every labor organization that wishes the help of the National Labor Relations Board must file this form. One of the officers of the labor organization should fill out this form on behalf of his organization.

WHERE TO FILE.—NATIONAL AND INTERNATIONAL LABOR ORGANIZATIONS must file this form with the Affidavit Compliance Branch, National Labor Relations Board, Washington 25, D. C.

LOCAL LABOR ORGANIZATIONS must file this form with the Regional Office of the National Labor Relations Board with which they usually file cases.

WHEN TO FILE.—There must be an up-to-date form on file with the National Labor Relations Board at all times. This form must be renewed under the following circumstances:

a. Whenever there is a change of officers of your organization.
b. After every election of union officers even though there is no change in officers.
c. Whenever the term of office of one or more of your officers changes.

If your officers are not installed immediately upon election; you should advise the appropriate office of the National Labor Relations Board, as indicated under WHERE TO FILE, when they will be installed. Under such circumstances the old officers will be considered as holding over until the new officers are installed.

HOW TO PREPARE THIS FORM.—Completely fill out the reverse side of this form as follows:

a. TITLE OF OFFICE:
Write in this column the exact title of each officer listed in your constitution and by-laws whether the office is vacant or not.

b. NAME OF OFFICER:
In this column show the name of the person occupying each of the offices listed in the first column. If any office is not filled, write the word "VACANT." If one person holds two or more of the offices, show his or her name opposite each office.

c. EXPIRATION DATE OF PRESENT TERM;
Write in this column the date the officer's term of office will expire. Be sure to give the day, month, and year.

d. NAME OF UNION:
Be sure to give the full name of your organization, including the local name and number.

e. AFFILIATION:
If your organization is affiliated with a National or International organization, be sure to give the full name of the National or International.

EXAMPLE:

Plastic, Button and Novelty Workers Union, Local 506
(Full name of local and number)

International Ladies Garment Workers Union, AFL
(Full name of national or international)

f. SIGNATURE AND ADDRESS:
A responsible officer of the organization must sign this certificate. Fill in the business address of the organization, be sure to give street address, city and State.

g. DATE:
Enter the date on which this certificate is signed.

NOTE.—If you are submitting this form for the first time, you must also submit an "*Affidavit of Noncommunist Union Officer*" for each officer listed on the reverse side of this form. The "*Affidavit of Nonconmunist Union Officer*" is known as form NLRB-1081. If you are refiling this form it is not necessary that a new "*Affidavit of Nonconmunist Union Officer*" be submitted for reelected officers if earlier affidavits on file with the National Labor Relations Board are less than one year old.

993

Form NLRB-1085
(8-48)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

DISTRIBUTION OF FINANCIAL DATA CERTIFICATE

(Submit single copy only. Before completing, read the Instructions on the back)

1. The Union has filed with the Secretary of Labor its financial report for the fiscal year ending Dec (Month) 31 (Day) 1948 (Year)

2. The Union has given copies of the report to all its members in the following way(s): ***(Put an "X" in the proper box. If you gave copies to the members in more than one way, check all proper boxes.)***

(A) [X] We published a copy in our paper, or in a bulietin, which we distributed to all our members.

(B) [ ] We sent to each local constituent unit of the Union named below enough copies for all its members, with instructions (*a*) to post a copy on the bulletin board or in a conspicuous place at the headquarters and meeting hall of the local, and (*b*) to announce to its membership at the next regular meeting that copies were ready for distribution to all members, and (*c*) to keep ready for distribution enough copies for all its members; which instructions have been carried out, to the best of my knowledge and belief.

(C) [X] We mailed copies to all our members.

(D) [X] *(THIS WAY MAY BE USED ONLY BY LOCAL UNIONS.)* We posted a copy in a conspicuous place at the headquarters and meeting hall of the local Union, and announced at a regular meeting that copies were ready for distribution to all members.

(E) [ ] We used none of the above ways, but we distributed the report in the following way: *(If you need more space, write on a separate sheet of paper, and attach it to this sheet.)*

I, an official of the Union, certify that this information is true to the best of my knowledge and belief.

Amalgamated Bargard District Union of Mine Mill & Smelter Workers Local 890
(Full name of Union, including local name and number)

International Union of Mine, Mill and Smelter Workers
(Full name of national or international Union of which it is an affiliate or constituent unit)

Victor E. Lucky
(Signature)

Box 358
(Street)

Date Oct. 15, 1949 Bayard, New Mexico
(City and State)

NOTE.—You must renew this certificate each time you file your financial report with the Secretary of Labor.

16—80080-1

994

INSTRUCTIONS

1. **WHO MUST FILE.**—Any Union which wishes to have the help of the National Labor Relations Board must file Form NLRB–1085, Distribution of Financial Data Certificate, to certify that it has given to all its members copies of the financial report filed with the Secretary of Labor.

   If the Union is a new one, and has not completed its first fiscal year, it must nevertheless file Form NLRB–1085 showing the date of the end of its fiscal year, and the way in which it will distribute its report to its members.

2. **WHEN TO FILE.**—A Union may file Form NLRB–1085 at any time after it has given copies of its report to its members. The Union must refile Form NLRB–1085 each time it files a financial report with the Secretary of Labor.

3. **WHERE TO FILE.**—National and international Unions must file Form NLRB–1085 with Affidavits Compliance Branch, National Labor Relations Board, Washington 25, D. C.

   Local Unions must file Form NLRB–1085 with the Regional Office of the National Labor Relations Board with which they normally file cases.

4. HOW TO PREPARE THE CERTIFICATE:

   Item 1: Fill in the date of the end of the fiscal year for which the report was filed with the Secretary of Labor.

   Item 2:

   (1) National or international Unions may use ways (A), (B), (C), or (E), or any combination of them, but must not use way (D). If the Union uses way (B), the instructions sent with the copies to the local Union must cover (*a*), (*b*), and (*c*). No less than all three are acceptable.

   (2) Local Unions may use any of the five ways or a combination of them.

   (3) If you check (E), you must remember, in describing the way you used, that

   (*a*) The method described must be very much like (A), (B), (C), or (D), or a combination of them.

   (*b*) Neither posting the report nor reading it at a Union meeting is enough alone.

   (*c*) You must arrange to give copies of the report to all members or to make copies available to all members.

   (*d*) If you distribute the report in a way like (B) or (D), you may use any effective method, such as giving a copy to each member personally, or placing enough copies on a table in the meeting hall and inviting members to take one if they want it.

   (*e*) If you make the report available at a regular meeting of the Union, you need not search out members not at the meeting to deliver copies of the report to them.

   (*f*) If you hand out the report at the plant gate, shop, bunkhouse, etc., you must also announce at a regular meeting of the Union that copies are there for all members, and you must post a copy at the meeting hall, in order to take care of members who were absent from work or otherwise missed outside the meeting hall.

5. CERTIFICATION:

   a. Fill in both the name and the local number, if any, of the Union. *Example:* Plastic, Button and Novelty Workers Union, Local 506.

   b. Fill in the name of the national or international with which the Union is affiliated. *Example:* International Ladies Garment Workers Union, AFL.

   c. A responsible officer of the Union must sign the certificate.

   d. Fill in the street address, city, and State where the Union is located.

   e. Fill in the date on which the certificate is signed.

U. S. GOVERNMENT PRINTING OFFICE 16—56050-1

995

FORM NLRB-3054
(12-49)

NATIONAL LABOR RELATIONS BOARD

CERTIFICATE OF INTENT

INSTRUCTIONS: This certificate form may be used by a labor organization to notify the proper office of the National Labor Relations Board of its intent to remain in compliance with Section 9 (f) and (g) of the Labor-Management Relations Act, 1947. Submit single copy only

I HEREBY CERTIFY THAT I AM AN OFFICER OF THE LABOR ORGANIZATION NAMED BELOW, AND THAT WITHIN 90 DAYS AFTER THE FISCAL YEAR ENDING Dec 31, 1949 (Date), THIS ORGANIZATION INTENDS TO:

1. REFILE WITH THE DEPARTMENT OF LABOR, THE FINANCIAL DATA COVERING THE NEXT FISCAL YEAR;
2. FURNISH SUCH DATA TO ITS MEMBERS;
3. NOTIFY THE NATIONAL LABOR RELATIONS BOARD BY FILING FORM NLRB-1085, DISTRIBUTION OF FINANCIAL DATA CERTIFICATE.

IT IS THEREFORE REQUESTED THAT THE NATIONAL LABOR RELATIONS BOARD CONTINUE TO PROCESS CASES IN WHICH THIS ORGANIZATION IS AN INTERESTED PARTY DURING THIS 90-DAY PERIOD.

Amalgamated Bayard District Union of Mine, Mill
FULL NAME OF LABOR ORGANIZATION (Including local name and number)
and Smelter Workers, Local 890,
Box 98, Bayard, New Mexico
ADDRESS (Street, City and State)

International Union of Mine Mill and Smelter Workers C.I.O.
FULL NAME OF NATIONAL OR INTERNATIONAL ORGANIZATION OF WHICH IT IS AN AFFILIATE OR CONSTITUENT UNIT

Jan 19, 1950
(Date)

Clinton E. Jencks
Signature

President Local 890
Title of Office

International Rep. Summerow

M-10

GPO W FSO 26-114

997

NATIONAL LABOR RELATIONS BOARD

Sixteenth Subregional Office
201 R. F. Miller Bldg.
504 N. Kansas St.
El Paso, Texas

April 21, 1950

Pattern 32

Mr. C. E. Jencks, President
Local No. 890, International Union
of Mine, Mill & Smelter Workers
Box 98
Bayard, New Mexico

Gentlemen:

The following documents have been received from your organization in connection with renewal of compliance with Section 9 (f), (g) and (h) of the Labor Management Relations Act, 1947.

☐ Executed affidavit (Form NLRB 1080)

☐ Executed affidavits (Form NLRB 1081)

☒ A copy of the Department of Labor's letter indicating that your organization has re-filed the proper information under Section 9 (f) and (g) of the Act.

☒ Certificate Form NLRB 1085 notifying the Board that you have furnished copies of the financial data to your members.

Your organization will be considered in compliance with the filing requirements under Section 9 (f) and (g) until Oct. 10, 1950 and under Section 9 (h) until April 30, 1950, provided there ~~are~~ no intervening changes in your officers.

If your organization has an active case before the Board, we will give you 30 days advance notice, whenever possible, of pending expiration of compliance as reflected by our records. We assume no responsibility for notification as it is your obligation to keep this material up to date.

If you intend to file charges or petitions with other Regional Offices of the Board, you should notify this office as to the field offices with which you intend to file cases. Such offices will then be notified of your renewed compliance.

Very truly yours,

Aubrey McEachern

Officer-in-Charge

cc: Affidavit Compliance Officer
National Labor Relations Board
Washington 25, D. C.

998

AMALGAMATED BAYARD DISTRICT UNION

OF MINE, MILL AND SMELTER WORKERS

Box 436
Bayard, New Mexico

Telephones
03384 and 510R

LOCAL 890

April 27, 1950

Mr. Aubrey McEachern, Officer in Charge
National Labor Relations Board
504 North Kansas
El Paso, Texas

Dear Sir:

Within the next few days we shall forward to your office executed forms, 1080 and 1081.

We do not however, understand that portion of your pattern letter of April 21, 1950, in which it is stated that organizations will be considered in compliance with the following reference, under sections, 9, F, and G. Until October 10, 1950.

within the next few days we shall forward to your office executed forms, 1080 and 1081.

We do not however, understand that portion of your pattern letter of April 21, 1950, in which it is stated that organizations will be considered in compliance with the following reference, under sections, 9, F, and G. Until October 10, 1950.

As you know our Fiscal year will run until December 31, 1950, and it will be some time before the Auditor will have a financial audit completed.

Please advise whether this part of the NLRB letter might be an error.

Very truly yours,

Amalgamated Bayard District
Union of Mine, Mill & Smelter
Workers Local 890

Clinton E. Jencks /s
Clinton E. Jencks, President

CEJ/cg

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Si teenth Subregional Office
201 R. F. Miller Bldg.
50[illegible] N. Kansas St.
El Paso, Texas

May 2, 1950

Mr. Clinton E. Jencks, President
Amalgamated Bayard District, Local 890
Union of Mine, Mill & Smelter Workers
Box 436
Bayard, New Mexico

Dear Mr. Jencks:

This will acknowledge receipt of your letter of April 27, 1950, in which you inquire whether the dates of expiration of 9 (f) and (g) as shown in our letter was in error. The copy of the Department of Labor letter which you forwarded to this office shows that the registration data was last filed as of October 10, 1949. Since it is required that the registration information must be filed annually, the earliest expiration date of compliance with Section 9 (f) and (g) is October 10, 1950.

In order to be in compliance with Section 9 (f) and (g) until the end of your fiscal year, December 31, 1950, it will be necessary that you fill in the enclosed Labor Organization Registration Form and forward it to the U. S. Department of Labor, Washington, D. C. When you receive your new Department of Labor compliance letter, please forward the copy to this office.

1950, in which you inquire whether the dates of expiration of 9 (f) and (g) as shown in our letter was in error. The copy of the Department of Labor letter which you forwarded to this office shows that the registration data was last filed as of October 10, 1949. Since it is required that the registration information must be filed annually, the earliest expiration date of compliance with Section 9 (f) and (g) is October 10, 1950.

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Sincerely,

Aubrey McEachern
Officer-in-Charge

Enclosure

52-12

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Form NLRB-501 (12-48)

Budget Bureau No. 64-R003.2
Approval expires Nov. 30, 1950

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

IMPORTANT—READ CAREFULLY

Where a charge is filed by a labor organization, or an individual or group acting on its behalf, a complaint based upon such charge will not be issued unless the charging party and any national or international labor organization of which it is an affiliate or constituent unit have complied with section 9 (f), (g), and (h) of the National Labor Relations Act.

INSTRUCTIONS.—File an original and 4 copies of this charge with the NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 33-CA-105

Date Filed October 30, 1950

Compliance Status Checked By: E. T. C.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

Name of Employer: EMPIRE ZINC COMPANY

Number of Workers Employed: 140

Address of Establishment (Street and number, city, zone, and State): HANOVER, NEW MEXICO

Nature of Employer's Business: MINING AND MILLING

The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and 5 (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about September 29, 1950 the above named employer, by its officers, agents and employees, by the acts set forth herein, and by other acts and conduct, interfered with, restrained and coerced its employees in the excercise of the rights gauranteed in Section 7 of the act.

On or about September 29, 1950 the Company, by its officers, agents and employees, refused to bargain collectively with the authorized representatives of Local 890, Amalgamated Bayard District Union of Mine, Mill and Smelter workers, chosen by a majority of employees at its Hanover, New Mexico operations to represent them for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

On or about September 29th, 1950 it, by its officers, agents and employees

the excercise of the rights gauranteed in Section 7 of the act.

On or about September 29, 1950 the Company, by its officers, agents and employees, refused to bargain collectively with the authorized representatives of Local 890, Amalgamated Bayard District Union of Mine, Mill and Smelter workers, chosen by a majority of employees at its Hanover, New Mexico operations to represent them for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

On or about September 29th, 1950 it, by its officers, agents and employees unilaterally posted and put into effect a new wage scale other than that provided for in the Collective bargaining agreement.

3. Full Name of Labor Organization, Including Local Name and Number, or Person Filing Charge: Amalgamated Bayard District Union of Mine, Mill & Smelter Workers Local 890

4. Address (Street and number, city, zone, and State): Box 98, Bayard, New Mexico — Telephone No.: 9992

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization): International Union of Mine, Mill and Smelter Workers

6. Address of National or International, if any (Street and number, city, zone, and State): 431 South Dearborn Street, Chicago, Illinois — Telephone No.:

7. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By Clinton E. Jones
(Signature of representative or person filing charge)

Oct 28, 1950 (Date) — President, Local 890 (Title, if any)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U. S. CODE, TITLE 18, SECTION 80)

U. S. GOVERNMENT PRINTING OFFICE 16—87230-2

Mr. Williams:

Your Honor, we feel we cannot go further until the examination of Mr. Eckert. In fact, we are nearly ready to rest, in other words.

The Court:

You are about through but you don't want to announce?

Mr. Williams:

That is right. We don't rest because Mr. Eckert might bring up something else.

The Court:

Well, the Court, under the circumstances, has excused Mr. Eckert until tomorrow morning in order that counsel would have time to prepare cross-examination. So, you have nothing further to offer, then, unless cross-examination of Mr. Eckert should develop something new?

Mr. Williams:

That is right.

Whereupon a recess was taken at 11:30 o'clock A. M., and upon reconvening at 9:30 o'clock A. M., January 20, 1954, proceedings were resumed as follows:

KENNETH ECKERT, a witness for the Government, was recalled to the witness stand for cross-examination, and testified further as follows:

The Court:

All right, Mr. McTernan, you will proceed, please.

Mr. McTernan:
Thank you, Your Honor.

On Cross-Examination.

Questions by Mr. McTernan:

Q. Mr. Eckert, did the Communist Party have a Constitution during the years 1945 through 1950?

A. They had a document they called a Constitution.

Q. And did that document that they called a Constitution contain provisions dealing with conditions for obtaining and retaining membership in the Communist Party?

A. Yes.

Mr. McTernan:
No further questions.

Mr. Herring:
That is all.

(Witness excused.)

Mr. Herring:
The Government rests, Your Honor.

The Court:
The Government rests. What does the defendant say?

Mr. McTernan:
Your Honor, may we have a little time to decide exactly what we want to present to the Court?

The Court:
About how long do you think you would want?

Mr. McTernan:
I think if we had about an hour we would be in a position to present something to the Court.

At this point, a recess was called by the Court until 10:30 A. M. the same day, at which time it reconvened. However, the jury was excused until 2:00 o'clock P. M. and the following proceedings were then held before the Court of the presence of the jury:

Mr. McTernan:
At this time we ask that the Court direct the prosecution to elect on which of the two counts set out in the indictment it relies in contending that the defendant, Clinton Jencks, filed a false affidavit in a matter within the jurisdiction of the National Labor Relations Board.

May we remind Your Honor that we addressed this motion to this effect to you before trial, and in denying it from the bench you said, as I recall, you thought that the Government should be required to elect but not at that time.

The Court:
I don't believe the Court quite said that. He said he would pass upon it after he heard the evidence. I don't think he committed himself definitely that they would be required to do so, but that he would consider it after the Government had offered its evidence.

Mr. McTernan:

Now that the prosecution's evidence is in it is necessary that such an election be made. The gist of the offense here is a filing of an affidavit in a matter within the jurisdiction of an agency of the United States; whether the document contained one allegedly false statement or many allegedly false statements, there can be no more than one offense from one filing. Your Honor will probably recall the language of the Third Circuit in "United States v. Valenti, 207 F. 2d 242", at Page 244. The Court, after reviewing the applicable provisions of the two statutes, namely, 18 USC, Section 1001, and Section 9(h) of the National Labor Relations Act, as amended, said this: "It will thus be seen that the act having legal significance is the filing of the noncommunist affidavit with the Board. Until the affidavit has been delivered to the Board to be placed 'on file' it has had no legal effect whatever. Until then the Board is not empowered to deal with it or to act in the light of it; it is therefore not yet a matter which has come within the jurisdiction of the Board. It follows that the crime denounced by section 1001 of Title 18, read in the light of section 9(h) of the National Labor Relations Act, is the act of filing a false noncommunist affidavit with the National Labor Relations Board and not the act of signing such an affidavit or swearing to its truth. While the matter may constitute the crime of perjury under state law, a false statement has not been made in a matter within the jurisdiction of the National Labor Relations Board, within the meaning of section 1001, until the affidavit through its filing has become the basis for action by the Board." And then they cite "Reass v. United States, 99 F. 2d 752" and

"United States v. Borow, 101 F. Supp. 211." Both of those cases, Your Honor, we argued to you in our earlier presentation of this motion.

Now, Your Honor, since there can't be, under the facts shown here, on April 28, 1950, but only one filing—or perhaps April 28th isn't quite the right date. The affidavit is dated April 28th. I think the Labor Board date stamp is May 2, 1950. In any event, there is no question about that the filing took place at one time, either April 28 or May 2, 1950. Now, it is claimed in the indictment that that filed affidavit is false in two respects; one as to denial of membership in the Communist Party; and secondly, as to denial of affiliation with the Communist Party. We are entitled to know at this point which falsity the Government relies on in attempting to prove the crime charged. We are entitled to know this, Your Honor, in order to have adequate notice of the matters to be met by the defendant in presenting his case. We have urged you before cases which establish the repugnancy between members on onehand and affiliation on the other. One cannot be a member and an affiliate. One can be one or the other. The difference between the two has been clearly illustrated by the kind of proof which the prosecution has offered here, and you may remember that much of the proof which was offered dealing with ideas expressed by the defendant or things said by him went to the question of affiliation, and they offered it on the ground of affiliation alone, apparently, although the record is far from clear on it. Now, at this point the defendant has his last opportunity to know what it is he has to meet. Basically, he has to know which charge he has to meet. Has he falsified, according to the Government's claim, as to membership, or has he

falsified as to affiliation? He cannot have falsified as to both. And we, therefore, request Your Honor, without going into this argument as we have done the ones before, that the election be compelled at this time. And we also respectfully suggest, Your Honor, that we must know the election which the Government will make in order adequately to address ourselves to other aspects of their evidence, for the purposes of motions to be made at the close of their case, motions that we want to make with reference to striking testimony and with reference to a judgment of acquittal, and unless we know what it is the Government relies on now, what they claim proves the offense, or what offense, what falsity they rely on, we simply are not in a position to go forward.

The Court:

What does the Government say?

Mr. Williams:

Your Honor, we have argued this out with you many times here in this Court, and in our recent Pereira case the exact point was presented, and the Fifth Circuit has said clearly that an election was not required, when any evidence, that is the word that is used by the Supreme Court, if any evidence is required to prove one count it is not required to prove the other. An election is not required. The Supreme Court says, and the Fifth Circuit quotes from it in this Pereira opinion, that more than one offense can be carved from one statute, if any evidence is required to prove one that is not required to prove the other; and that is the situation here. And, if I may say this, that this same indictment has been argued and passed on by two other trial judges and

both of them have overruled this argument of election, and in fact in one of them a conviction has been had on both counts. That wouldn't be binding on this Court but it's what two other trial judges have done.

Mr. McTernan:

I don't know what counsel refers to. In the Hupman case there was no conviction. The jury hung, and the judge sitting on the motions agreed with counsel. He deferred, as Your Honor did, final decision on the election until after the evidence was in, but he did say that he didn't think the defendant could be punished on both counts of this indictment. I am reading from the transcript of the argument.

Mr. Williams:

Mr. Counsel, aren't you informed of the conclusion of that trial two or three days ago?

Mr. McTernan:

I am not.

Mr. Williams:

We are informed by the Department of Justice that he was convicted on both counts.

The Court:

Motion of the defendant to require the prosecution to elect is overruled and denied.

Mr. McTernan:

We move to strike, Your Honor, the testimony of prosecution witnesses dealing with attendance on the part of the defendant at so-called closed Communist

meetings. This is the testimony of the witness Currie with reference to a meeting in April of 1949; the testimony of the witness Ford as to meeting in August, 1948, February, 1949, April, 1949, May, 1949, and July or August 1949; the testimony of the witness Knott as to a meeting in either late 1946 or early 1947; the testimony of the witness Petersen as to meetings in May or June 1947 or early 1948, February, 1948, and May or June, 1948; and testimony by the witness Eckert as to two meetings in the month of August, 1947.

We move to strike this testimony—and, Your Honor, I am sorry I cannot give you transcript references because we do not have a transcript, but I think I sufficiently identified the matter so that Your Honor knows what we are talking about—we move to strike this testimony on four grounds. First, that the evidence has no probative value on the issue of membership or affiliation; secondly, that it constitutes proof of a crime other than the crime charged; third, that it is highly prejudicial; and fourth, that it constitutes an invasion and infringement of the areas guaranteed by the First Amendment of the Constitution of the United States.

First, with reference to the probative value of this evidence, Your Honor. The things asserted in support of this evidence consist of wholly circular reasoning. It says, in effect, that this was a meeting confined to members of the Communist Party, the defendant was there, and therefore the defendant is a Communist; or, the defendant was a Communist and therefore the meeting was a Communist meeting. This is reasoning which will simply not be recognized by the law, and it has been specifically rejected on precisely the same issue in the case of "Bridges

v. United States, 199 F. 2d 811", at Page 836. I read this language the other day. Let me repeat it as specifically applied to here: (reads) "It is true that a number of the witnesses described some of these meetings which Bridges attended, and at some of which he presided, as 'closed' Communist meetings . . ."

Now, you may remember, Your Honor, that these witnesses were repeatedly permitted to testify that these were closed Communist meetings on the ground that they knew of their own knowledge that they were closed Communist meetings. Continuing with the Court's opinion: (reads) "The logical fallacy in concluding from this that Bridges must therefore have been a Party member is that it assumes the truth of that which is sought to be proven. If, in fact, Bridges was not a Party member, his presence at such a meeting would mean no more than that he attended a meeting at which every other person present was a Party member."

Now, I submit, Your Honor, that nothing more has been accomplished in the proof here than to have evidence brought on to the effect that this defendant at various times, and times far remote from the critical date charged in the indictment, attended meetings at which, in the language of the Court, "every other person present was a Party member." It does not, for the same reasons of logical fallacy pointed out in the Bridges case, prove that the defendant was a member of the Communist Party. Moreover, Your Honor, it does not prove, and this is an issue that was not involved in the Bridges case, it does not prove or tend to prove that the defendant was affiliated with the Communist Party. The relationship of affiliation has apparently less formal

incidents, less strict incidents, than the relationship with membership, but it still has incidents which are not satisfied by merely proving that the defendant at intermittent times, over a period of from April of '46 down to possibly as late as August or perhaps July of '49, attended some meetings at which every other person present was a Communist. Let me read, if I may, a certain section from the opinion of the United States Supreme Court in "Bridges v. Wixon, 326 US 135", particularly at pages 142, 143, and 144, dealing, Your Honor, with the question of the content or meaning of the term "affiliation". The Court quotes with approval a Circuit Court opinion in United States v. Reimer, 79 F. 2d 315", which said that: (reads) "Affiliation was not proved 'unless the alien is shown to have so conducted himself that he has brought about a status of mutual recognition that he may be relied on to co-operate with the Communist Party on a fairly permanent basis. He must be more than merely in sympathy with its aims or even willing to aid it in a casual, intermittent way. Affiliation includes an element of dependability upon which the organization can rely which, though not equivalent to membership duty, does rest upon a course of conduct that could not be abruptly ended without giving at least reasonable cause for the charge of a breach of good faith." The Court also quotes Dean Landis, of Harvard Law School, who had sat as a hearing officer in an earlier Bridges case, to this effect, that the word "affiliation" in the corporate field "embraces not the casual affinity of an occasional similarity of objective, but ties and connections that, though less than that complete control which parent possesses over subsidiary, are nevertheless sufficient to create a continuing relationship

that embraces both units within the concept of a system." I might pause there, Your Honor. If we were to accept those tests there would be at best only two meetings which would even come close to meeting those standards. The witness Ford testified to two meetings in April or May of 1949 which he said were closed Communist Party meetings, and in which he said the matters talked about were the organizational structure and functioning of the State Communist Party in New Mexico. Now, Your Honor, assuming that these show that at that time Jencks was functioning as a member of the Communist Party in New Mexico, they are dated one year—one year —before the affidavit was allegedly signed, and to show from that alone, Your Honor, that there is an element of dependability upon which the organization can rely, resting upon a course of conduct that could not be abruptly ended without giving at least reasonable cause for the charge of a breach of good faith, or claim from that evidence that there was a continuing relationship that embraces both units within the concept of a system, is simply to stretch the facts beyond any scope that they are entitled to bear, because, Your Honor, it isn't important in this case that such a relationship existed on April or May, 1949. It is critical that it existed on April 28, 1950, and to say that Jencks had this kind of relationship one year before that establishes affiliation a year later is simply to talk illogically.

Now, going on with "Bridges v. Wixon", the Court said in its own language in that case, referring to affiliation: (reads) "It imports, however, less than membership but more than sympathy. By the terms of the statute it include those who contribute money or anything of value to an organization which be-

lieves in, advises, advocates, or teaches the overthrow of our government by force or violence. That example throws light on the meaning of the term 'affiliation'. He who renders financial assistance to any organization may generally be said to approve of its objectives or aims. So Congress declared in the case of an alien who contributed to the treasury of an organization whose aim was to overthrow the government by force and violence. But he who cooperates with such an organization only in its wholly lawful activities cannot by that face be said as a matter of law to be 'affiliated' with it. Nor is it conclusive that the cooperation was more than intermittent and showed a rather consistent course of conduct. Common sense indicates that the term 'affiliation' in this setting should be construed more narrowly. Individuals, like nations, may cooperate in a common cause over a period of months or years though their ultimate aims do not coincide. Alliances for limited objectives are well known. Certainly those who joined forces with Russia to defeat the Nazis may not be said to have made an alliance to spread the cause of Communism. An individual who makes contributions to feed hungry men does not become 'affiliated' with the Communist cause because those men are Communists. A different result is not necessarily indicated if aid is given to or received from a proscribed organization in order to win a legitimate objective in a domestic controversy. Whether intermittent or repeated, the act or acts tending to prove 'affiliation' must be of that quality which indicates an adherence to or a furtherance of the purposes or objectives of the proscribed organization as distinguished from mere cooperation with it in lawful activities."

Now, Your Honor, think for a moment about this evidence. Currie said that in April, 1946, the defendant Jencks met with a group of people who were members of the Communist Party, all but one of whom were veterans. What did they talk about? They talked about veterans problems, employment for hungry veterans, housing for homeless veterans, elimination of discrimination against veterans who were members of minority groups. They tried to work out ways and means of eliminating the descrimination against veterans; of finding housing and employment for veterans; of finding methods of training veterans for useful peacetime pursuits. Isn't that precisely the kind of conduct, Your Honor, which the Supreme Court says does not constitute or show affiliation? Ford, on the meetings, other than the two I have already discussed, August '48, February '49, and July or August of '49, told about meetings of people every one of whom, including the officers of the Communist Party, was also an active leader in the Progressive Party, and they discussed the program of the Progressive Party, and in one of them they discussed Jencks' candidacy for public office. They discussed ways and means for bringing the program of the Progressive Party to the people of New Mexico, ways and means of increasing the vote. Another meeting involved people who were active in an organization called "Anma", the National Association of Mexican-American people; ways of furthering a program to eliminate the vicious discrimination against the Mexican-American people here in certain areas of the United States, and particularly there in New Mexico. Alliances for limited objectives, Your Honor, to seek a proper purpose. Exactly the sort of thing that the Court in "Bridges v. Wixon" talk-

ed about. To use this as evidence of affiliation in the Communist Party, Your Honor, is simply to repudiate a law that has been recognized by the Courts of this land for many years. In Knott's testimony, there is one meeting—if there is any credibility left in Knott's testimony—there is evidence of one meeting in late '46 or early '47, in which they discussed the organization of a labor union in New Mexico, how to strengthen that union, how to build ties between that union and the Communist Party. For what purpose? For building a better labor union better to represent the workers there, and particularly, if you recall, better to solve the problems of the many Mexican-American workers who were in that area. Again, Your Honor, precisely the kind of conduct which the Supreme Court says does not establish affiliation as a matter of law. The Petersen meetings, closed Communist meetings. Every one of them, except one, dealt with union problems, opposition to the Taft-Hartley Act. It might be interesting, Your Honor, at this point to observe the remarks of Judge Holtzoff in connection with a pre-trial motion in the Gold case, which I referred to earlier, in which counsel raised the problem of whether opposition to the Taft-Hartley Act would be supporting Communism or showing affiliation with Communism and the Court said, "I think it is absurd to say that merely because a man opposes the Taft-Hartley Act he is a Communist." Now, the meetings in Salt Lake, in 1947, the meeting in Denver, in 1948, dealt with precisely this problem; opposition to the enactment of Taft-Hartley; work for the repeal of Taft-Hartley after it had been enacted; problems in connection with whether or not the union should comply with filing require-

ments of Sections 9(f), (g), and (h) of the National Labor Relations Act, in which the Taft-Hartley Act had inserted the provisions under the old law.

They discussed wage problems, bargaining problems, internal union matters. Again, Your Honor, assuming that these were Communists that the defendant was meeting with, assuming that some kind of assistance was sought, and indeed obtained, from the Communist Party in connection with the objectives there discussed and programs there laid out, they still do not make out a case for affiliation as the decided cases define the term. Petersen testified to Jencks' purported attendance at a meeting of the Communist Party in Denver in late '47 or early '48. My recollection is that he couldn't testify to anything that Jencks said. All he could do was fall back on that wisecrack of that wherever you saw Jencks you could hear him talk. So we are bereft of evidence, Your Honor, at least the prosecution is bereft of evidence to show any kind of such mutual cooperation with the Communist Party that that attendance at that meeting would show affiliation, and certainly in connection with these so-called Communist Party organizational meetings, two by Ford, in April and May of '49, and one by Petersen in late '47 or early '48, there hasn't even been established a pattern of relationship which rises to the dignity of affiliation as the Courts have decided the many cases on this point. So, also, Your Honor, with reference to the meeting testified to by Eckert, two meetings in August, '47, where it is claimed the defendant met with Communists who were also members and officers of the Mine-Mill union, and what did they discuss there? They discussed union problems, wage problems, the election of officers to the union, and they obviously

can't rise to the dignity of showing affiliation, as the term is defined in the Bridges case.

Now, secondly in this connection, Your Honor, this testimony that I am now referring to, beginning with Currie and coming down to Eckert, does in fact tend to prove a crime different from the crime charged; and, as a matter of fact, the prosecution here has gone to great length to prove a crime different from the crime charged. There was introduced in this record, over our objections, Government's Exhibit 7, which the prosecution contends is a false non-Communist affidavit filed by Mr. Jencks on October 18, 1949. This is not a crime charged in the indictment, and this evidence, if it has any probative value at all, would have a greater probative value in proving a falsity with reference to Government's Exhibit 7 than it would in connection with proving a falsity of Government's Exhibit 1, which is a 1950 affidavit, so what the Government has done here is to prove a crime in October, 1949. I say that in this sense, Your Honor, that while I think that this evidence that I am now discussing would not prove a crime in October, 1949, for all of the reasons I have given you under subdivision one of this argument, the evidence is closer in time to the filing in October, 1949, as shown by Government's Exhibit 7, than it is to the filing in 1950 and, therefore, if probative at all, the evidence proves a crime other than the crime charged. I don't think at this juncture, Your Honor, that it is necessary for me to spell out the enormity of the deprivation of the Constitutional rights which such a line of proof constitutes. We have already cited to Your Honor a number of cases dealing with this subject in which, as here, the proof includes the commission of a crime different from the one charged. Such

proof is not necessary to the proof of the crime charged, just as here the proof of this '49 false filing is by no means necessary to the proof of the 1950 filing, which is unrelated to it, and that such evidence has no place in this record or in any record dealing with proof of the crime charged. May I remind you that we run here now a serious risk that this defendant will be convicted on a crime different from the crime charged. He has not only been tried on a crime different from the crime charged, but in view of the state of the evidence and the availability of all of this to the jury, there is a very strong risk that the conviction will rest on a crime other than that charged. May I simply call Your Honor's attention to the case of "Cole v. Arkansas, 333 US 196", in which the Supreme Court reversed an Arkansas conviction because the defendant there was charged with an offense under one section of the State statute and convicted under it, and later his conviction was upheld under a different section of the statute, a situation closely similar, Your Honor, to the one here.

Now, it needs no elaboration on my part, Your Honor, to show that this evidence, not probative of membership, and not probative of affiliation, that this evidence dealing with a different crime than the one charged, is highly prejudicial to this defendant. It involves connection with the Communist Party. It involves activity and relationship to the Communist Party. The whole Communism issue these days is so enmeshed in prejudice that it is impossible to disentangle it. It can't help but induce a conviction on the basis of prejudice although the evidence proves not what is charged in any legitimate way.

Finally, in this connection, Your Honor, let me point out that this evidence, used as a basis of proof of crime, constitutes an invasion of the defendant's liberties under the First Amendment. It has been often said in the cases, and by the Department of Justice even today, that citizens have a right to meet with whom they choose. They have a right to appeal for acceptance in the market place of ideas. They have a right to advance such causes as they deem just, and even they tell you that it is not a crime to be a member of the Communist Party per se, and as a matter of fact, there is a statute on the books, the McCarran Act of 1950, the Internal Security Act, Section 4(f), which provide in substance that neither membership or officership in the Communist Party should per se constitute a violation of any law of the United States.

Now, what has the prosecution proven here? The prosecution has proven with the testimony of these witnesses that the defendant attended a number of meetings where Communists were present. Apparently this proves, if the Bridges rule is to be accepted, and I submit there is no answer to it, only that he attended a number of meetings at which everyone else present was a member of the Communist Party. It does not prove, under the Bridges case that is, the last Bridges case, 199 F. 2d that the defendant was a member of the Communist Party. It shows most importantly, Your Honor, that at these meetings there was discussed matters which have a place in the market of public opinion in the United States; veterans affairs, discrimination against veterans, employment for veterans, training for veterans, are legitimate subjects of discussion together with Communists or non-Communists. Matters in-

volving the labor union, Your Honor, have a place in the market of public opinion in the United States. The advancing of candidates in programs, in elections, has a place in the market place of public opinion in the United States. These union matters, whether to oppose Taft-Hartley, whether to work for the repeal of Taft-Hartley, whether to comply with Taft-Hartley, working out wage demands, deciding who should be the officers of a union; these things, Your Honor, have a place in discussion among American citizens, whether one discusses them among Communists or not.

I say to Your Honor, advisedly and with restraint, that if this kind of evidence is going to be used to prove that a person is a Communist in the United States, then we have written the First Amendment off the books. No person is free to take part in discussion, whether it is closed discussion or public discussion, Your Honor, if what he said and the persons to whom he said it, are to be taken as evidence of his proscribed political affiliations. The illustration of what happened to Senator Taft, Your Honor, falls into insignificance in comparison with what is being done here. How can a union representative avoid, whether he likes it or not, how can he avoid discussing such questions of what to do about returning veterans, and we have lots of returning veterans. How can he avoid discussing the problems of whether or not to accept or to work against the pending labor legislation. How can he avoid taking a position on the Communist issue in public life today. How can he avoid working out wage and other demands for the security of his membership. And if he is not entitled, as I say the cases say he is entitled, to seek allies in

support of those objectives, from wherever he may find them, then the guarantees of public discussion, the guarantees of a right to work toward legitimate objectives, have been wiped out; and I say to Your Honor that your judicial office could be made to hang by just a slender thread, as Jencks' liberty hangs today, if simply on the basis of what you say and the persons with whom you meet are to be used as evidence of whether or not you belong to a particular political party or have certain political affiliations. My license to practice law hangs by such slender thread if this kind of proof is permitted.

I say to you that if the welfare, the licenses, the liberty, of citizens turns upon such things, Your Honor, then we no longer have a democracy, we no longer have a First Amendment. In the guise of fighting that which the office holders call "totalitarianism", we have embraced totalitarianism to our own death.

The Court:

The motion to strike is overruled.

Mr. McTernan:

Your Honor, we move for a judgment of acquittal on each of the following grounds:

First, the evidence has not shown, nor does it afford any basis for the inference that the affidavit was filed by the defendant, or at his direction or request, or wit . his approval.

Second, the evidence is insufficient to show that the affidavit was filed in a matter within the jurisdiction of the United States in that there was no evidence offered that the International Union of Mine, Mill and

Smelter Workers of America had complied with the filing requirements of Section 9(h) or with the filing requirements of Sections 9(f) and (g).

Third, the evidence is insufficient to show that the defendant made or filed an affidavit, whether the same was false or not, and thus the evidence is insufficient to show that the defendant made or filed anything in a matter within the jurisdiction of the National Labor Relations Board.

Fourth, the evidence is insufficient to show that the defendant knew he was a member or affiliate of the Communist Party on April 28, 1950.

Fifth, the evidence tends to establish not the crime charge but another unrelated crime at an earlier and different date from the one charged in the indictment; and

Sixth, that the statutes, 18 U. S. C., Section 1001, and Section 9(h) of the National Labor Relations Act, as amended, as applied in this case constitute an infringement of the defendant's rights under the First Amendment to the Constitution of the United States.

I will simply add a general ground, that the evidence is insufficient to establish the offense charged under either Count 1 or Count 2, and rather than argue this matter at length, we simply submit the motion as stated.

The Court:

Motion is overruled.

Mr. McTernan:

We have no further motions to address to the Court at this time.

Mr. Williams:

I have a little matter to take up with the Court out of the presence of the jury.

The Court:

Would you like to take it up now?

Mr. Williams:

I am ready.

The Court:

All right, the Court will hear you.

Mr. Williams:

I am informed by counsel that they propose to offer in evidence several documents concerning the defendant's war record way back many years ago. I cannot see any possible application they have in this case. It evidently is thought by them, or will be contended by them, evidently, that it goes to his reputation. I have, I think, ample authority here from the textbooks that general reputation can be shown only by witnesses on that subject, people who know him, and not by individual acts, I would like for you to instruct counsel not to offer these instruments in front of the jury because for him to get up and say "I have a gold medal I want to present" is just as damaging to us as if he puts it in evidence. If the Court decides that it is not admissible then I think he should instruct them not to offer it in front of the jury.

The Court:

The Court can't anticipate what the defense expects to offer, or read their mind.

Mr. Williams:

I have told you what they told me. They are going to offer them. I just don't want them to do it in front of the jury.

The Court:

The Court thinks it is a matter that might properly be decided in the absence of the jury if counsel expects to offer such evidence.

Mr. McTernan:

We had planned to offer, Your Honor, as part of the defense, the following documents, I understand that counsel's objection to them is solely on the ground of relevancy rather than on the ground of foundation. We were going to offer the following documents: The Honorable Discharge from the Army of the United States of Clinton Jencks, dated January 27, 1943, given him on completion of his training to become an officer in the Army of the United States; also, his Certificate of Service in the Army of the United States, issued to him on October 5, 1945, upon the completion of his service as an Officer, to wit: A First Lieutenant in the Air Force. We also intended to offer "General Orders No. 67" of the Headquarters, Seventh Air Force, dated June 5, 1945, awarding the defendant, Mr. Jencks, the Distinguished Flying Cross for outstanding service as a Navigator in the Air Force. Then we had planned to offer a series of General Orders of the Headquarters, Seventh Air Force, dated in April, 1945, in which

the defendant Jencks was awarded successively the Air Medal and six Oak Leaf Clusters to the Air Medal, in connection with his service as a Navigator in the Air Force. Both the Distinguished Flying Cross and the seven air medals were awarded in connection with combat service in the South Pacific during World War II.

The purpose of these offers, Your Honor, is the following: We think that they are relevant on the question of whether or not the defendant Jencks was or could have been a member of any organization charged to have the characteristics set out in the legislative findings to the Internal Security Act of 1950, whether by virtue of membership in such organization or affiliation with such organization. We submit that they are relevant also to the question of whether or not he was or could have been affiliated with any organization bent upon the calling of political strikes in interstate commerce, that being a characteristic of the Communist Party as found by the Congress in connection with enactment of Section 9(h) of the National Labor Relations Act, as amended.

Thirdly, we think that because of the common acceptance, if not legal finding, and whether or not such finding or acceptance has any basis in fact it is generally thought that members of the Communist Party are disloyal to the Government of the United States; certainly that is the thinking of the Executive Officers of the Government in connection with the various loyalty orders and executive orders, Executive Order No. 9835 and its successor, I believe it is Executive Order No. 10050; this evidence would show that the defendant Jencks is not and could not be, either on the date charged in the indictment, or any of the dates shown in the evidence, disloyal to the Government of the United States.

The Court:

In other words, you contend it goes to good character?

Mr. McTernan:

Much more. It goes to character, and in the abstract it goes to whether or not this defendant could be a member of or affiliated with the kind of organization that the Congress has made findings about, and judges have made findings about, and people say about the Communist Party, as charged in the indictment.

The Court:

Well, the Court thinks if you were confining it just to character, in this Court's experience as a lawyer and a judge too, it would be an unusual approach to that question, but in view of your other statements it presents a different situation.

Mr. McTernan:

Well, that is all I have to advise the Court at this time.

The Court:

The Court's reaction at the present moment is that if it just went to good character the Court wouldn't think it is admissible because that is not the way to prove good character, by independent acts or things of that sort, but counsel says he wants to offer it to show, for whatever it may be worth, that a man with that kind of a record would not be a Communist, or something to argue before the jury, I take it. That may present, the Court thinks, a different situation than just the ordinary line of testimony showing good character.

Mr. Williams:

Your Honor, as I understand his argument, he says it goes to show that a Communist, in other words, could not be a member of the Armed Forces, and half a dozen of our witnesses admitted that they were Communists when they were in the Armed Forces, when they were in the Army. Certainly the Court will take judicial notice of the fact that there are Communists in the United States Army. Besides, does a man being decorated back in 1945 show that he was not a Communist, member of a secret organization, or something that he had in his heart?

The Court:

The legal question that disturbs the Court is whether or not it is a matter for the jury to pass on as going to his character and reputation; not necessarily that he couldn't be a Communist, because, of course, he could be a Communist whether he had a brilliant war record or was honored by some organization.

Mr. Williams:

And, we object to them because they are ex parte decisions by some general that this man should be decorated. It is hopelessly immaterial and irrelevant, ex parte statements and conclusions by other people, and has no probative force as direct evidence; and the Court has just stated it wasn't admissible as character evidence so it is not admissible on any ground. I would like to keep it out, if you will.

The Court:

You want to be heard. Mr. Alderman?

Mr. Alderman:
Just a moment, please. (Confers with Mr. Williams.)

Mr. Williams:
He has just reminded me that you held his conduct and activity during the Korean War was not admissible, so why should his conduct and activities in some other war be admissible? They are ex parte, and the main thing, they are not binding on this Court and jury, and have no probative value as direct evidence or as character evidence.

The Court:
Well, the Court will reserve decision on this until two o'clock. Will the defense be ready to proceed at that time?

Mr. McTerman:
Subject to all the limitations of being able to proceed in a case of this kind, we will be ready to proceed at two o'clock.

The Court then, at 11:50 A. M, on January 20, 1954, took a recess until 2:00 o'clock P. M. the same date, at which time proceedings were resumed as follows:

The Court:
The Court will say to counsel that if offered the Court will admit the defendant's war record.

Mr. McTerman:
Thank you, You Honor.

The Court:
Is there anything else to dispose of in the absence of the jury?

Mr. Williams:
We have nothing.

Mr. McTernan:
Not at this time, Your Honor.

(Whereupon the jury returned to the Courtroom and proceedings were resumed before the jury as follows):

The Court:
What does the defendant say?

Mr. McTernan:
The defendant is ready to proceed subject to the same limitations indicated earlier.

One thing, with reference to our motion to strike, could it be deemed that we also move to strike Government's Exhibits 7, 8 and 9, in connection with that motion?

The Court:
Let the record so show, and that the Court overrules the motion to strike.

Mr. Williams:
For the purpose of the record, we object to the admission of any evidence concerning the war record for all the reasons heretofore argued to the Court.

The Court:
Objection overruled.

(At this point several exhibits were marked for identification as Defendant's Exhibits "D-38" to "D-47A".)

• General Orders No. 67 classified SECRET and distributed to those concerned.

(GENERAL ORDERS,
NUMBER 68)

HEADQUARTERS SEVENTH AIR FORCE,
APO [illegible], 5 June 1945 .

	SECTION
AWARD OF DISTINGUISHED FLYING CROSS	I
AWARD OF DISTINGUISHED FLYING CROSS	II
AWARD OF DISTINGUISHED FLYING CROSS	III
AWARD OF DISTINGUISHED FLYING CROSS (MISSING IN ACTION)	IV
AWARD OF FIRST BRONZE OAK LEAF CLUSTER TO DISTINGUISHED FLYING CROSS	V
AWARD OF SOLDIER'S MEDAL	VI
AWARD OF BRONZE STAR MEDAL	VII

SECTION I

AWARD OF DISTINGUISHED FLYING CROSS: - By direction of the President, under the provisions of the Act of the Act of Congress approved 2 July 1926 (Bull. No. 2, W.D., 1926) and pursuant to authority contained in paragraph 14, AR 600-45, 22 September 1943 and 1lr Hq AAFPOA, 16 October 1944, the Distinguished Flying Cross is awarded by the Commanding General, Seventh Air Force, to the following named officers an enlisted men, Air Corps, United States Army, for extraordinary heroism in aerial flight against the enemy on dates indicated. During these missions each as a crew member against the enemy on dates indicated. During these missions each as a crew memberof a heavy bombardment type aircraft, participated in a highly successful medium altitude mine laying mission against the Bonin Islands. The material construction of the mines necessitated extremely low altitude flying and

22 September 1943 and 1lr Hq AAFPOA, 16 October 1944, the Distinguished Flying Cross is awarded by the Commanding General, Seventh Air Force, to the following named officers an enlisted men, Air Corps, United States Army, for extraordinary heroism in aerial flight against the enemy on dates indicated. During these missions each as a crew member against the enemy on dates indicated. During these missions, each as a crew memberof a heavy bombardment type aircraft, participated in a highly successful medium altitude mine laying mission against the Bonin Islands. The

material construction of the mines necessitated extremely low altitude flying and despite the danger of both heavy and medium anti-air raft fire around the enemy held Harbors, the mining was carried out so successfully that the supplying of the enemy for development of bases on this island was definitely retarded. Notwithstanding the intense and accurate anti-aircraft fire and the possibility of interception by enemy aircraft of fighter type, the mission was successfully completed. The courage in the face of great danger, the high degree ofprofessional skill and [illegible] ion to duty displayed by each crew fulfill the highest traditions of the Army Air Forces.

26 November 1944

1LT ET CLINTON E JENCKS 0670746

BY COMMAND OF MAJOR GENERAL DOUGLAS:

WILLIAM J FLOOD,
Brigadier General, General Staff Corps,
Chief of Staff.

OFFICIAL:

s/s/E. J. HEX XEON,
Colonel, Adjutant General's Department,
Adjutant General.

A TRUE EXTRACT COPY:

Clinton E. Jencks

CLINTON E. JENCKS,
1st Lt. AC

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G NERAL ORDERS)
:
NUMBER 55)

HEADQUARTERS SEVENTH AIR FORCE.
APO #244, 26 April 1945.

EXTRACT

SECTION
AWARD OF AIR MEDAL..... I

*** *** ***

SECTION I

AWARD OF AIR MEDAL: - By direction of the President, under the provisions of Executive Order No. 9158, 11 May 1942 (Bull. No. 25, W.D., 1942), as amended by Executive Order No. 9242-A, 11 September 1942 (Bull. No. 49, W.D., 1942), and pursuant to authority contained in paragraph 17, AR 600-45, 22 September 1943 and ltr Hq AAFPOA, 18 October 1944, an Air Medal is awarded by the Commanding General, Seventh Air Force, to the following named officers and enlisted men, Air Corps, United States Army, for meritorious achievement while participating in sustained aerial operations against the enemy from 23 August 1944 to 15 February 1945. During this period, each officer and enlisted man, as a crew member of a heavy bombardment airplane, participated in numerous missions against heavily defended enemy held bases involving long over water flights to and from the target. Throughout these operations, which were accomplished with distinction above and beyond that normally expected, each displayed high skill and courage, inflicting severe damage to enemy air bases and shipping, reflecting great credit upon himself and the Army Air Forces:

*** *** ***

in sustained aerial operations against the enemy from 23 August 1944 to 15 February 1945. During this period, each officer and enlisted man, as a crew member of a heavy bombardment airplane, participated in numerous missions against heavily defended enemy held bases involving long over water flights to and from the target. Throughout these operations, which were accomplished with distinction above and beyond that normally expected, each displayed high skill and courage, inflicting severe damage to enemy air bases and shipping, reflecting great credit upon himself and the Army Air Forces:

*** *** ***

1ST LT CLINTON E JENCKS 0670746

*** *** ***

BY COMMAND OF BRIGADIER GENERAL FLOOD:

WILLIAM J. FLOOD,
Brigadier General, General Staff Corps,
Chief of Staff.

OFFICIAL:

/s/ R. J. Erickson
R. J. ERICKSON,
Colonel, Adjutant General's Department,
Adjutant General.

34

Mr. McTernan:

We offer as Defendant's Exhbiit 39, Your Honor, a certified copy of General Orders No. 55, Headquarters Seventh Air Force, APO #244, 26 April 1945, entitled "Award of Air Medal."

The Court:

Let it be admitted.

Mr. McTernan:

These are all numbered in sequence, and before asking leave to read any of them, I will offer each separately. As Defendant's Exhibit 40, a certified copy of General Orders No. 55, Headquarters, Seventh Air Force, APO #244, 26 April 1945, entitled "Award of First Bronze Oak Leaf Cluster to Air Medal." As Defendant's Exhibit 41, a certified copy of General Orders No. 55, Headquarters, Seventh Air Force, APO #244, 26 April 1945, entitled "Award of Second Bronze Oak Leaf Cluster to Air Medal." As Defendant's Exhibit 42, a certified copy of General Orders No. 55, Headquarters, Seventh Air Force, APO #244, 26 April 1945, entitled "Award of Third Bronze Oak Leaf Cluster to Air Medal." As Defendant's Exhibit 43, a certified copy of General Orders No. 55, Headquarters, Seventh Air Force, APO #244, 26 April 1945, entitled "Awards of Fourth Bronze Oak Leaf Cluster to Air Medal." As Defendant's Exhibit 44, a certified copy of General Orders No. 55, Headquarters, Seventh Air Force, APO #244, 26 April 1945, entitled "Award of Fifth Bronze Oak Leaf Cluster to Air Medal." As Defendant's Exhibit 45, a certified copy of General Orders, No. 55, Headquarters, Seventh Air Force, APO #244, 26 April 1945, entitled "Award of Sixth Bronze Oak Leaf Cluster to Air Medal." Are Defendant's Exhibits 39 through 45 received, Your Honor?

1034

GENERAL ORDERS)
NUMBER 53)

HEADQUARTERS SEVENTH AIR FORCE.
APO #244, 26 April 1945.

EXTRACT

SECTION

...

A[illegible] OF FIRST BRONZE OAK LEAF CLUSTER TO AIR MEDAL IV

...

SECTION IV

AWARD OF FIRST BRONZE OAK LEAF CLUSTER TO AIR MEDAL - By direction of the President, under the provisions of Executive Order No. 9158, 11 May 1942 (Bull. No. 28, W.D., 1942) as amended by Executive Order No. 9242-A, 11 September 1942 (Bull. No. 49, W.D., 1942), and pursuant to authority contained in paragraphs 17 and 19, AR 600-45, 22 September 1943 and tr Hq AAFPOA, 18 October 1944, in addition to the Air Medal previously awarded the First Bronze Oak Leaf Cluster is awarded by the Commanding General, Seventh Air Force, to the following named officers and enlisted men, Air Corps, United States Army, for meritorious achievement while participating in aerial operations against the enemy from 22 August 1944 to 13 February 1945. During this period each officer and enlisted man, as a crew member of a heavy bombardment airplane, participated in numerous missions against heavily defended enemy held bases involving long over water flights to and from the target. Throughout these operations, which were accomplished with distinction above and beyond that normally expected, each displayed high skill and courage, inflicting severe damage to enemy air bases and shipping, reflecting great credit upon himself and the Army Air Forces:

(Bull. No. 49, W.D., 1942), and pursuant to authority contained in paragraphs 17 and 19, AR 600-45, 22 September 1943 and tr Hq AAFPOA, 18 October 1944, in addition to the Air Medal previously awarded the First Bronze Oak Leaf Cluster is awarded by the Commanding General, Seventh Air Force, to the following named officers and enlisted men, Air Corps, United States Army, for meritorious achievement while participating in aerial operations against the enemy from 22 August 1944 to 13 February 1945. During this period each officer and enlisted man, as a crew member of a heavy bombardment airplane, participated in numerous missions against heavily defended enemy held bases involving long over water flights to and from the target. Throughout these operations, which were accomplished with distinction above and beyond that normally expected, each displayed high skill and courage, inflicting severe damage to enemy air bases and shipping, reflecting great credit upon himself and the Army Air Forces:

...

1ST LT CLIFTON E JENKS 0670746

...

BY COMMAND OF LIEUTENANT GENERAL FLOOD:

WILLIAM J. FLOOD,
Brigadier General, General Staff Corps,
Chief of Staff.

OFFICIAL:

/s/ [illegible] Hickson
[illegible]
Colonel, Adjutant General's Department,
Adjutant General.

D-40

1035

GENERAL ORDERS)
:
NUMBER 85)

HEADQUARTERS SEVENTH AIR FORCE.
APO #244, 26 April 1945.

EXTRACT

•••	•••	SECTION •••
AWARD OF SECOND BRONZE OAK LEAF CLUSTER TO AIR MEDAL.....		VII
•••	•••	•••

SECTION VII

AWARD OF SECOND BRONZE OAK LEAF CLUSTER TO AIR MEDAL: - By direction of the President, under the provisions of Executive Order No. 9158, 11 May 1942 (Bull. No. 25, W.D., 1942), as amended by Executive Order No. 9242-A, 11 September 1942 (Bull. No. 49, W.D., 1942), and pursuant to authority contained in paragraphs 17 and 18, AR 600-45, 22 September 1943 and Ltr Hq AAFPOA, 18 October 1944, in addition to the Air Medal and Bronze Oak Leaf Cluster previously awarded, the second Bronze Oak Leaf Cluster is awarded by the Commanding General, Seventh Air Force, to the following named officers and enlisted men, Air Corps, United States Army, for meritorious achievement while participating in sustained aerial operations against the enemy from 25 September 1944 to 10 February 1945. During this period, each officer and enlisted man, as a crew member of a heavy bombardment airplane, participated in numerous missions against heavily defended enemy held bases, involving long over water flights to and from the target. Throughout these operations, which were accomplished with distinction above and beyond that normally expected, each displayed high skill and courage, inflicting severe damage to enemy air bases and shipping, reflecting great credit upon himself and the Army Air Forces:

tember 1942 (Bull. No. 49, W.D., 1942), and pursuant to authority contained in paragraphs 17 and 18, AR 600-45, 22 September 1943 and Ltr Hq AAFPOA, 18 October 1944, in addition to the Air Medal and Bronze Oak Leaf Cluster previously awarded, the second Bronze Oak Leaf Cluster is awarded by the Commanding General, Seventh Air Force, to the following named officers and enlisted men, Air Corps, United States Army, for meritorious achievement while participating in sustained aerial operations against the enemy from 25 September 1944 to 10 February 1945. During this period, each officer and enlisted man, as a crew member of a heavy bombardment airplane, participated in numerous missions against heavily defended enemy held bases, involving long over water flights to and from the target. Throughout these operations, which were accomplished with distinction above and beyond that normally expected, each displayed high skill and courage, inflicting severe damage to enemy air bases and shipping, reflecting great credit upon himself and the Army Air Forces:

••• ••• •••

1ST LT CLINTON E JENCKS 0670746

••• ••• •••

BY COMMAND OF BRIGADIER GENERAL FLOOD:

WILLIAM J. FLOOD,
Brigadier General, General Staff Corps,
Chief of Staff.

OFFICIAL:

/s/ R. J. Erickson
R. J. ERICKSON,
Colonel, Adjutant General's Department,
Adjutant General.

1036

GENERAL ORDERS)
NUMBER 55)

HEADQUARTERS SEVENTH AIR FORCE
APO #244, 26 April 1945.

EXTRACT

SECTION

... ...

AWARD OF THIRD BRONZE OAK LEAF CLUSTER TO AIR MEDAL..... IX

... ...

SECTION IX

AWARD OF THIRD BRONZE OAK LEAF CLUSTER TO AIR MEDAL: - By direction of the President, under the provisions of Executive Order No. 9158, 11 May 1942 (Bull. No. 25, W.D., 1942), as amended by Executive Order No. 9242-A, 11 September 1942 (Bull. No. 49, W.D., 1942), and pursuant to authority contained in paragraphs 17 and 18, AR 600-45, 22 September 1943, and Ltr Hq AAFFOA, 18 October 1944, in addition to the Air Medal and two Bronze Oak Leaf Clusters previously awarded, the third Bronze Oak Leaf Cluster is awarded by the Commanding General, Seventh Air Force, to the following named officers and enlisted men, Air Corps, United States Army, for meritorious achievement while participating in sustained aerial operations against the enemy from 19 September 1944 to 16 March 1945. During this period each officer and enlisted man, as a crew member of a heavy bombardment airplane, participated in numerous missions against heavily defended enemy held bases involving long over water flights to and from the target. Throughout these operations, which were accomplished with distinction above and beyond that normally expected, each displayed high skill and courage, inflicting severe damage to enemy air bases and shipping, reflecting great credit upon himself and the Army Air Forces:

AWARD OF THIRD BRONZE OAK LEAF CLUSTER TO AIR MEDAL: - By direction of the President, under the provisions of Executive Order No. 9158, 11 May 1942 (Bull. No. 25, W.D., 1942), as amended by Executive Order No. 9242-A, 11 September 1942 (Bull. No. 49, W.D., 1942), and pursuant to authority contained in paragraphs 17 and 18, AR 600-45, 22 September 1943, and Ltr Hq AAFFOA, 18 October 1944, in addition to the Air Medal and two Bronze Oak Leaf Clusters previously awarded, the third Bronze Oak Leaf Cluster is awarded by the Commanding General, Seventh Air Force, to the following named officers and enlisted men, Air Corps, United States Army, for meritorious achievement while participating in sustained aerial operations against the enemy from 19 September 1944 to 16 March 1945. During this period each officer and enlisted man, as a crew member of a heavy bombardment airplane, participated in numerous missions against heavily defended enemy held bases involving long over water flights to and from the target. Throughout these operations, which were accomplished with distinction above and beyond that normally expected, each displayed high skill and courage, inflicting severe damage to enemy air bases and shipping, reflecting great credit upon himself and the Army Air Forces:

... ...

1ST LT CLINTON E JENCKS 0670746

BY COMMAND OF BRIGADIER GENERAL FLOOD:

WILLIAM J. FLOOD,
Brigadier General, General Staff Corps,
Chief of Staff.

OFFICIAL:

/s/ R. J. Erickson
R. J. ERICKSON
Colonel, Adjutant General's Department,
Adjutant General.

Mr. McTernan:

We offer as Defendant's Exhibit 38, General Orders No. 67, dated June 5, 1945, copy of which has already been shown to counsel.

The Court:

Let it be admitted.

Mr. McTernan:

This is the document in connection with the ward of the Distinguished Flying Cross, Your Honor.

The Court:

All right.

Mr. McTernan:

May I read it to the jury at this time?

The Court:

Yes.

(Mr. McTernan then read EXHIBIT "D-38" to the jury, photostatic copy of which appears on the following page):

The Court:
Yes, let them be admitted.

Mr. McTernan:
I ask permission at this time to read Defendant's Exhibit 39.

The Court:
All right.

(Mr. McTernan then read same to the jury.)

Mr. McTernan:
Your Honor, Defendant's Exhibits 40 through 45 contain substantially the same language but apply to different time periods, and if I may, to shorten the time consumed in this, omit the reading and simply say that they cover periods beginning with 22 August 1944 and ending with 29 March 1945.

The Court:
All right.

DEFENDANT'S EXHIBIT "D-39", "D-40", "D-41", "D-42", "D-43", D-44", and "D-45" were thereupon received in evidence by the Court, and photostatic copies of each of these exhibits appear on the pages following.)

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56

MATTHEW BENDER & COMPANY MB

(GENERAL ORDERS)
NUMBER 55).

HEADQUARTERS SEVENTH AIR FORCE.
APO #244, 26 April 1945.

EXTRACT

SECTION

*** *** ***

AWARDS OF FOURTH BRONZE OAK LEAF CLUSTER TO AIR MEDAL..... XI

*** *** ***

SECTION XI

AWARD OF FOURTH BRONZE OAK LEAF CLUSTER TO AIR MEDAL: - By direction of the President, under the provisions of Executive Order No. 9158, 11 May 1942 (Bull. No. 22, W.D., 1942) as amended by Executive Order No. 9242-A, 11 September 1942 (Bull. No. 49, W.D., 1942), and pursuant to authority contained in paragraphs 17 and 18, AR 600-45, 22 September 1943 and Ltr Hq AAFPOA, 18 October 1944, in addition to the Air Medal and three Bronze Oak Leaf Clusters previously awarded, the Fourth Bronze Oak Leaf Cluster is awarded by the Commanding General, Seventh Air Force, to the following named officers and enlisted men, Air Corps, United States Army, for meritorious achievement while participating in sustained aerial operations against the enemy from 11 September 1944 to 27 February 1945. During this period, each officer and enlisted man, as a crew member of a heavy bombardment airplane, participated in numerous missions against heavily defended enemy held bases, involving long over water flights to and from the target. Throughout these operations, which were accomplished with distinction above and beyond that normally expected, each displayed high skill and courage, inflicting severe damage to enemy air bases and shipping, reflecting great credit upon himself and the Army Air Forces:

*** *** ***

1ST LT CLINTON B JERCHES 0570748

*** *** ***

BY COMMAND OF BRIGADIER GENERAL FLOOD:

WILLIAM J. FLOOD,
Brigadier General, General Staff Corps,
Chief of Staff.

OFFICIAL:

/s/ R. J. Erickson
R. J. ERICKSON
Colonel, Adjutant General's Department,
Adjutant General.

D-43

GENERAL ORDERS)
NUMBER 56)

HEADQUARTERS SEVENTH AIR FORCE.
APO #244, 26 April 1945.

EXTRACT

SECTION

*** *** ***

AWARD OF FIFTH BRONZE OAK LEAF CLUSTER TO AIR MEDAL..... XIII

*** *** ***

SECTION XIII

AWARD OF FIFTH BRONZE OAK LEAF CLUSTER TO AIR MEDAL: - By direction of the President, under the provisions of Executive Order No. 9158, 11 May 1942 (Bull. No. 25, W.D., 1942) as amended by Executive Order No. 9158, 11 September 1942, (Bull. No. 49, W.D., 1942), and pursuant to authority contained in paragraphs 17 and 18, AR 600-45, 22 September 1943 and Ltr Hq AAFPOA, 18 October 1944, in addition to the Air Medal and four Bronze Oak Leaf Clusters previously awarded, the fifth Bronze Oak Leaf Cluster is awarded by the Commanding General, Seventh Air Force to the following named officers and enlisted men, Air Corps, United States Army, for meritorious achievement while participating in sustained aerial operations against the enemy from 18 September 1944 to 18 March 1945. During this period each officer and enlisted man, as a crew member of a heavy bombardment airplane, participated in numerous missions against heavily defended enemy held bases involving long over water flights to and from the target. Throughout these operations which were accomplished with distinction above and beyond that normally expected, each displayed high skill and courage, inflicting severe damage to enemy air bases and shipping, reflecting great credit upon himself and the Army Air Forces:

(Bull. No. 49, W.D., 1942), and pursuant to authority contained in paragraphs 17 and 18, AR 600-45, 22 September 1943 and Ltr Hq AAFPOA, 18 October 1944, in addition to the Air Medal and four Bronze Oak Leaf Clusters previously awarded, the fifth Bronze Oak Leaf Cluster is awarded by the Commanding General, Seventh Air Force to the following named officers and enlisted men, Air Corps, United States Army, for meritorious achievement while participating in sustained aerial operations against the enemy from 18 September 1944 to 18 March 1945. During this period each officer and enlisted man, as a crew member of a heavy bombardment airplane, participated in numerous missions against heavily defended enemy held bases involving long over water flights to and from the target. Throughout these operations which were accomplished with distinction above and beyond that normally expected, each displayed high skill and courage, inflicting severe damage to enemy air bases and shipping, reflecting great credit upon himself and the Army Air Forces:

*** *** ***

1ST LT CLINTON E JENCKS 0670746

*** *** ***

BY COMMAND OF BRIGADIER GENERAL FLOOD:

WILLIAM J. FLOOD,
Brigadier General, General Staff Corps,
Chief of Staff.

OFFICIAL:

/s/ R. J. Erickson,
R. J. ERICKSON,
Colonel, Adjutant General's Department,
Adjutant General.

D-44

1039

GENERAL ORDERS)
NUMBER 56)

HEADQUARTERS SEVENTH AIR FORCE.
APO #244, 26 April 1945.

EXTRACT

SECTION

...

AWARD OF SIXTH BRONZE OAK LEAF CLUSTER TO AIR MEDAL... XIV

...

SECTION XIV

AWARD OF SIXTH BRONZE OAK LEAF CLUSTER TO AIR MEDAL: - By direction of the President, under the provisions of Executive Order No. 9158, 11 May 1942 (Bull. No. 25, W.D., 1942) as amended by Executive Order No. 9242-A, 11 September 1942 (Bull. No. 49, W.D., 1942), and pursuant to authority contained in paragraphs 17 and 18, AR 600-45, 22 September 1943 and Ltr Hq AAFPOA, 18 October 1944, in addition to the Air Medal and five Bronze Oak Leaf Clusters previously awarded, the sixth Bronze Oak Leaf Cluster is awarded by the Commanding General, Seventh Air Force, to the following named officers and enlisted men, Air Corps, United States Army, for meritorious achievement while participating in sustained aerial operations against the enemy from 16 October 1944 to 29 March 1945. During this period, each officer and enlisted man, as a crew member of a heavy bombardment airplane, participated in numerous missions against heavily defended enemy held bases, involving long over water flights to and from the target. Throughout these operations, which were accomplished with distinction above and beyond that normally expected, each displayed high skill and courage, inflicting severe damage to enemy air bases and shipping, reflecting great credit upon himself and the Army Air Forces:

...

1ST LT CLINTON E JENKS 0670746

...

BY COMMAND OF BRIGADIER GENERAL FLOOD:

WILLIAM J. FLOOD,
Brigadier General, General Staff Corps,
Chief of Staff.

OFFICIAL:

/s/ R. J. Erickson,
R. J. ERICKSON,
Colonel, Adjutant General's Department,
Adjutant General.

D-45

"D-47"

Army of the United States

CERTIFICATE OF SERVICE

This is to certify that

CLINTON E JENCKS 0 670 746 1st Lt

2517th AAF Base Unit

honorably served in active Federal Service

Army of the United States

CERTIFICATE OF SERVICE

This is to certify that

CLINTON E JENCKS 0 670 746 1st Lt

2517th AAF Base Unit

honorably served in active Federal Service in the Army of the United States from

28 January 1943 *to* 22 December 1945

Given at SEPARATION BASE Ellington Field Texas

on the Fifth *day of* October *19* 45

Harold C Highley

HAROLD C HIGHLEY
Major Air Corps

D-47

Mr. McTernan:

We offer, Your Honor, as Defendant's Exhibit 47 and 47A, a photostatic copy of a Certificate of Sevice awarded to Clinton E. Jencks, No. 0 670 746, First Lieutenant, on October 5, 1945; the original being here in Court and having been made available to counsel.

The Court:

Yes, let it be admitted in evidence.

Mr. McTernan:

I ask permission, Your Honor, to read the first page of the Certificate of Service.

The Court:

Granted.

(Mr. McTernan showed the document to the jury.)

Mr. McTernan:

This is the document, gentlemen.

(Reads same.)

(DEFENDANT'S EXHIBIT "D-47" and "D-47A", have been received in evidence by the Court, a photostatic copy of each of these exhibits appears on the pages following.)

MILITARY RECORD AND REPORT OF SEPARATION
CERTIFICATE OF SERVICE

1. LAST NAME - FIRST NAME - MIDDLE INITIAL	2. ARMY SERIAL NUMBER	3. GRADE	4. ARM OR SERVICE	5. COMPONENT
JENKS CLINTON E	0 670 746	1st Lt	AC	AUS

6. ORGANIZATION	7. DATE OF RELIEF FROM ACTIVE DUTY	8. PLACE OF SEPARATION
2517th AAF Base Unit Ellington Fld Texas	22 Dec 45	SEPARATION BASE Ellington Fld Texas

9. PERMANENT ADDRESS FOR MAILING PURPOSES	10. DATE OF BIRTH	11. PLACE OF BIRTH
St Louis Missouri	[illegible] Mar 18	Colorado

12. ADDRESS FROM WHICH EMPLOYMENT WILL BE SOUGHT	13. COLOR EYES	14. COLOR HAIR	15. HEIGHT	16. WEIGHT	17. NO. OF DEPENDENTS
See 9	Blue	Blond	5 10	165 LBS.	3

18. RACE			19. MARITAL STATUS			20 U.S. CITIZEN		21. CIVILIAN OCCUPATION AND NO.
WHITE	NEGRO	OTHER (specify)	SINGLE	MARRIED	OTHER (specify)	YES	NO	
X				X		X		Clerk General 01.040

MILITARY HISTORY

SELECTIVE SERVICE DATA	22. REGISTERED YES	22. REGISTERED NO	23. LOCAL S. S. BOARD NUMBER	24. COUNTY AND STATE	25. HOME ADDRESS AT TIME OF ENTRY ON ACTIVE DUTY
	X		unknown	St Louis Mo	See 9

26. DATE OF ENTRY ON ACTIVE DUTY	27. MILITARY OCCUPATIONAL SPECIALTY AND NO.
28 Jan 43	Navigator 1034

28. BATTLES AND CAMPAIGNS

Marshalls Islands WDGO 17 26 Feb 44 Air Offensive Japan WDGO 80/44

29. DECORATIONS AND CITATIONS

AM w/4 OLC GO 55 Hq 7 AF 26 Apr 45 Sec 1 4 7 9 11 12 14
DFC GO 68 Hq 7th AF 5 Jun 45

30. WOUNDS RECEIVED IN ACTION

None

29. DECORATIONS AND CITATIONS

AM w/4 OLC GO 55 Hq 7 AF 26 Apr 45 Sec 1 4 7 9 11 12 14
DFC GO 68 Hq 7th AF 5 Jun 45

30. WOUNDS RECEIVED IN ACTION

None

31. SERVICE SCHOOLS ATTENDED

Ellington Fld Tex (Nav Pre)
Romo Fld Tex (Nav Adv)

32. SERVICE OUTSIDE CONTINENTAL U. S. AND RETURN

DATE OF DEPARTURE	DESTINATION	DATE OF ARRIVAL
28 Feb 44	Cent Pac	1 Mar 44
12 Mar 45	USA	15 Mar 45

33. REASON AND AUTHORITY FOR SEPARATION

Relvd fr AD Par 1-5 (D) Ltr 58 AG 239 [illegible]
to Ellington Fld Tex 2 Oct 45

34. CURRENT TOUR OF ACTIVE DUTY

CONTINENTAL SERVICE YEARS	MONTHS	DAYS	FOREIGN SERVICE YEARS	MONTHS	DAYS
1	10	3	1	0	21

35. EDUCATION (years)

GRAMMAR SCHOOL	HIGH SCHOOL	COLLEGE
	4	4

INSURANCE NOTICE

PAYMENT OF PREMIUMS IS NOT PAID WHEN DUE OR WITHIN THIRTY ONE DAY THEREAFTER, INSURANCE WILL LAPSE. MAKE CHECKS OR MONEY ORDERS PAYABLE TO THE TREASURER OF THE U. S. AND FORWARD TO COLLECTIONS SUBDIVISION, VETERANS ADMINISTRATION, WASHINGTON 25, D. C.

36. KIND OF INSURANCE	37. HOW PAID	38. Effective Date of Allotment Discontinuance	39. Date of Next Premium Due (one month after 38)	40. PREMIUM DUE EACH MONTH	41. INTENTION OF VETERAN TO		
	Direct to V.A.				Continue	Continue only	Discontinue
	X	30 Sep 45	1 Nov	$ 6 70	X	$	

RIGHT THUMBPRINT

43. REMARKS (This space for completion of above items or entry of other items specified in W. D. Directives)

Lapel Button Issued

[illegible] Score (2 Sep 45) 138

SIGNATURE OF OFFICER BEING SEPARATED

Clinton E. Jenks

45. PERSONNEL OFFICER (Type name, grade and organization - signature)

RICHARD W CLAYTON
1st Lt Air Corps Richard W. Clayton

WD AGO FORM 53 98
September, 1944

This form supersedes all previous editions of WD AGO Forms 53 and 260 for officers entitled to a Certificate of Service, which will not be used after receipt of this revision.

Mr. McTernan:

Your Honor, with reference to the testimony of the witness Brooks concerning a conversation between him and the defendant at the Hanover Housing Project in 1947, we have consulted with persons maintaining records concerning the residence of Mr. Jencks during the period April and May, 1947, and, having shown these documents to counsel, we have a stipulation that they may be read to the jury.

Mr. Williams:

We have no stipulation at all, Your Honor. We agreed not to object to them.

The Court:

Well, it amounts to about the same thing.

Mr. McTernan:

Perhaps I misunderstood counsel.

Mr. Williams:

I didn't.

The Court:

Well, if there is no objection they will be admitted.

Mr. McTernan:

I would like for the record to show that when I stated to the Court that perhaps I misunderstood Mr. Williams, he turned to the jury and said, within a few feet of them, that he didn't misunderstand. I take exception to that kind of conduct. I think it is highly prejudicial to this defendant.

The Court:

The Court don't approve of that either. You will adhere strictly to the orderly procedure of this Court.

Mr. McTernan:

May I proceed in reading these letters?

The Court:

Yes.

(The three letters in question were then read to the jury by Mr. McTernan.)

Mr. McTernan:

Your Honor, may the three letters that I read to the jury be marked as defense exhibits next in order?

The Court:

Yes.

(The documents were then marked as Defendant's Exhibits 48, 49 and 50.)

Mr. McTernan:

The three letters, Your Honor, have been marked as Defendant's Exhibits 48, 49 and 50. May they be received in evidence?

The Court:

They may.

(Exhibits "D-48", "D-49", and "D-50" were thereupon received in evidence by the Court, and photostatic copies of same appear on the three pages following.)

1045

Silver City, New Mex
January 14, 1954

The following is copied from the ledger book kept by me:

Lava Cottage Number One
Name of Renter: Clinton Jenks
May 19 to June 19, 1947 $37.50
June 19 to July 19, 1947 37.50
Moved July 19, 1947

This property is located off Cottage San Road, northwest of Silver City, New Mexico.

Signed:
J. F. Artcher

He was recommended to us by the Veteran' Center of Silver City
J. F. Artcher

D-48

1046

Fort Worth, Texas
January 19, 1954

Mr. Marshall W. Amis
Field Office Director
Public Housing Administration
Fort Worth, Texas.

Dear Sir:

The undersigned, on behalf of Mr. John McTernan, chief counsel in a federal proceeding now under way, respectfully requests information as to whether or not Clinton E. Jeneks was a tenant of the Hanover, New Mexico, Housing Project during the year 1947, and if so, the dates of commencement and termination of his tenancy.

Our best information is that he occupied an apartment with a numeral in the nineties.

Thanking you for your assistance, I am

Respectfully yours,

M. H. Ross

1047

PUBLIC HOUSING ADMINISTRATION

HOUSING AND HOME FINANCE AGENCY
300 West Vickery Blvd.
Fort Worth 4, Texas

January 19, 1954

In reply please refer to:
FW II-1: NM-2906l, Hanover, N. M.

Mr. M. H. Ross
606 No. Chestnut St.
Carlsbad, New Mexico

Dear Mr. Ross:

This will acknowledge your letter of January 19, 1954 regarding certain information concerning Mr. Clinton E. Jenkin, resident of the Lanham Act Project identified as Project NM-2906l, located in Hanover, New Mexico.

A review of the tenants ledger for Project NM-2906l shows that the lease for Mr. Clinton E. Jenkin for unit No. 183 of John M. Sully Villa, Project NM-2906l was effective under date of July 11, 1947. He moved from the project on December 11, 1947.

Yours very truly,

Karl Buster

KARL BUSTER
Assistant Director
Management-Disposition
Fort Worth Field Office

D-5

Mr. McTernan:
The defendant rests, Your Honor.

The Court:
Has the Government anything in rebuttal?

Mr. Herring:
The Government closes.

The Court:
Will counsel approach the bench, please?

(Whereupon counsel for both sides, but not the reporter, conferred with the Court in low tones.)

The Court:
Well, gentlemen of the jury, after a friendly conference here with all the lawyers, it seems certain to the Court that this case cannot be finished today because there will be two hours of argument on each side and, as you know the practice here, the Court has to give a charge as to what the law of this case is; so, in order that any special requested charges may be submitted to the Court in advance of the arguments, or more particularly, in advance of the charge of the Court, why, counsel is entitled to a reasonable time to prepare those charges. It is hoped, without making any definite promises, that the case can be finished tomorrow and turned over to you for your consideration probably by mid-afternoon, after the arguments and charge of the Court, somewhere about that. We make no promises about that, until we await developments, we will cross that bridge when we get to it. So the Court again instructs you, gentlemen, not to reach any conclusion, even in your own mind, about the evidence in this case. The Court asks you to

keep an open mind until you have heard all the arguments by counsel on both sides and the charges of the Court, and under no circumstances discuss it among yourselves or suffer anybody to discuss it within your presence and hearing until you have heard all the arguments and the charge of the Court and retire to your jury room to deliberate under your solemn oaths as to what should be done about this case. Counsel has suggested that it could be that if the case does not get to you until late in the evening you might be kept together tomorrow night. The Court has always tried to be very liberal in this Court, putting men strictly on their honor, but it is the practice that after everything is over, the arguments are made and the Court has charged you as to the law, then you will have to be kept together, so it is best that you should come prepared to be together tomorrow evening and possibly for the night. The Court hopes that doesn't happen, but it could happen if the case didn't get to you until late in the evening. With this understanding and these instructions, the Court stands adjourned until 9:30 tomorrow morning.

(A recess was then had, at 2:40 O'clock P. M. until 9:30 o'clock A. M. on January 21, 1954; the Court, without the jury, reconvened at the above time, and the following proceedings were had before the jury entered the Courtroom):

The Court:

Are you ready, gentlemen, with your requested charges, or don't you have any?

Mr. McTernan:

We have some in the course of preparation. They are being typed now.

The Court:

I believe under the rules the Court is required to act on the requests before the argument begins so you may know whether or not they are granted or refused.

Mr. McTernan:

We understood from the conference yesterday, Your Honor, that we could submit them to you before you made your charge to the jury.

The Court:

Yes, that is agreeable to the Court, if it is with you. I just didn't want any point raised about it if I give you more time to prepare them. The Court don't want any point raised later that they were not presented before the argument.

Mr. McTernan:

No, we won't raise that point.

The Court:

All right, bring in the jury.

(Resuming before the jury):

The Court:

All right, gentlemen, you may proceed with the arguments, which will be limited to two hours for each side, apportioned as you see fit.

(After counsel for both sides presented their oral arguments to the jury, the following proceedings took place before the bench, out of the hearing of the jury):

Mr. McTernan:

I want to address two motions for mistrial to the Court. One is based upon counsel's references to Government's Exhibit 7, the affidavit of October, 1949, and his argument in connection with the newspaper article—I don't remember the number of it; it is in evidence, the newspaper editorial which contains the phrase "phony affidavit"—on the ground that counsel has argued that the defendant committed a crime with which he has not been charged, and the proof in connection with which, and the agurment in connection with which, was wholly unrelated to and unnecessary to prove the crime charged.

The Court:

Motion overruled.

Mr. McTernan:

Secondly, we move for a mistrial on the ground that counsel has gone beyond the record in the last few sentences of his closing by charging that the evidence here —withdraw that—on the ground that counsel has stated that the defendant Jencks has been engaged in Communist activities right up to the present day. It involves matters not only outside the record, but matters with which he is not charged and which are wholly beyond the issues in this case and highly prejudicial.

The Court:

Motion overruled. While counsel are here let the record show that the defendant's requested charges were submitted to the Court before the Court charged the jury. All have been refused to which, I take it, the defendant excepts, and the same have been filed with the Clerk.

Mr. McTernan:

Thank you, Your Honor.

(Resuming before the jury):

The Court then delivered his charge to the jury, as follows:

Charge of the Court.

Gentlemen of the Jury:

Following the rules and procedure in United States District Courts, the Court will give you an oral charge covering the law of this case, and inasmuch as you will have no written instructions with you—only the indictment, exhibits and form of verdict—I invite your careful attention and consideration to what I am about to say.

The indictment returned by the Grand Jury for the El Paso Division of the United States District Court for the Western District of Texas is in two counts and reads as follows:

The First Count charges, 'That on or about the 28th day of April, 1950, in the Western District of Texas, Clinton E. Jencks, the defendant herein, in a matter within the jurisdiction of the National Labor Relations Board, an agency of the United States, did unlawfully and wilfully make, use and cause to be made and used and file and cause to be filed with the National Labor Relations Board a false writing and document, namely, an 'Affidavit of Non-Communist Union Officer' (Form NLRB-1081) knowing the same to contain a false, fictitious and fraudulent statement and representation, to wit: that he was not a member of the Communist Party,

whereas the said Clinton E. Jencks then and there well knew he was a member of the Communist Party. In violation of Section 1001, Title 18, United States Code."

The Grand Jury charges in the second count of this indictment, "That on or about the 28th day of April, 1950, in the Western District of Texas, Clinton E. Jencks, the defendant herein, in a matter within the jurisdiction of the National Labor Relations Board, an agency of the United States, did unlawfully and wilfully make, use and cause to be made and used and file and caused to be filed with the National Labor Relations Board a false writing and document, namely, an 'Affidavit of Non-Communist Union Officer' (Form NLRB-1081) knowing the same to contain a false, fictitious and fraudulent statement and representation, to wit: that he was not affiliated with the Communist Party, whereas the said Clinton E. Jencks then and there well knew he was affiliated with the Communist Party. In violation of Section 1001, Title 18, United States Code."

When the defendant, Clinton E. Jencks, was arraigned he pleaded not guilty to both counts of this indictment. The indictment, gentlemen of the jury, is no evidence of guilt and you are not to consider it in any sense as evidence. An indictment is merely the law's method of making an accusation against a defendant and placing him upon trial. The indictment carries with it no presumption of guilt. As a matter of law, the opposite is true. The defendant comes into Court with the presumption that he is innocent and that presumption remains with him throughout the trial. The effect of this presumption of innocence is to place upon the United States the burden of proving the defendant guilty beyond a reasonable doubt.

The fact that a defendant has been indicted and is charged with a crime is not in itself to be taken as an

indication of guilt, and no inference is to be drawn against him from that fact, because an indictment, as I said before, is merely the machinery and the procedure that the law provides for bringing a defendant before the Court and placing him on trial. That is the only function of an indictment.

Now, every defendant in a criminal case is presumed to be innocent, and this presumption of innocence attaches to the defendant throughout the trial. The burden of proof is upon the Government to prove the defendant guilty beyond a reasonable doubt, and unless the Government sustains this burden of proof and proves each essential element beyond a reasonable doubt that he committed the crime with which he is charged, you must find him not guilty.

But, you will probably ask, what is meant by "reasonable doubt"? It does not mean any doubt whatsoever. By a reasonable doubt, as its name implies, is meant a doubt based on reason, not any whimsical or capricious conjecture. It is a doubt which is reasonable in view of all the evidence. If, after impartial comparison and consideration of all the evidence, you can candidly say that you are not satisfied with the guilt of the defendant in this case, then you have a reasonable doubt; and you will acquit the defendant. But, if after such impartial comparison and consideration of all the evidence you can truthfully say that you have an abiding conviction of the defendant's guilt, such as you would be willing to act upon in the more weighty and important matters relating to your own personal affairs, then you have no reasonable doubt. If you can reconcile the evidence in this case with any reasonable hypothesis consistent with the innocence of the defendant, you should do so; and, in that case your verdict would be "not guilty."

Your duties as jurors are to determine questions of fact. The duty of the Judge or the Court is to determine questions of law. You are to determine the facts in this case and to those facts you will apply the law as I give it to you and render a verdict accordingly.

I impress upon you that you must enter upon your duties with your minds clear and free of any extraneous matters. Make your decision only on the evidence that has come to you here in this Courtroom. You will put completely out of your minds and disregard anything you may have heard, read or seen about this case save and except that which you have seen and heard here in this Courtroom during the trial of this case.

Any statements that I have made, that the Court may have made, during the progress of the trial in your hearing, are not evidence. In determining questions of law, it becomes the duty of the Court to rule on the admissibility and rejection of testimony which the witnesses are permitted to give. When the Court sustains an objection to a question, you will not draw any inference from that question, or speculate on what the answer might have been.

It is the duty, as well as the right, of a lawyer to object to the admission of evidence if he considers that in accordance with the rules of evidence it ought not be admitted. No inferences should be drawn from the objections made by counsel on either side during the progress of the trial, or the ruling of the Court upon the same.

At times an answer is given by a witness or a statement made in Court which the Court orders stricken from the record. Such answers or statements are not to be considered by you in your deliberations upon the case. When something is stricken from the record, you will put that out of your mind and not give considera-

tion to it in any way. The evidence which you will consider is what the witnesses are permitted to testify to from the witness stand, together with the exhibits which are offered in evidence in the case.

There is another form of evidence which should also be considered by you. During the progress of the trial the attorneys for the respective sides in the case may enter into stipulations. That is, they agreed that certain facts are true. These stipulations, or agreements, you will consider as evidence.

The law in this case, as I now give it to you, is binding upon you. It is not for you to act upon any preconceived idea of what the law is or what you think it ought to be. In determining what the facts are and applying the law thereto, you should act with complete impartiality between the Government and the defendant. The plaintiff in this case, the United States of America, and the defendant, Clinton E. Jencks, stand in this Court upon an equality and each is entitled to the exercise and benefit of your sound and deliberate judgment, based solely and only upon the evidence as it has been adduced here in Court, and the law as contained in this charge.

It is my intention to give no expression to any personal view upon what the evidence has shown, or with respect to the credibility of witnesses. You will not interpret anything I say as a personal view upon the subject of evidence. If there is any indication of such personal view, you will understand that it is not in any way binding upon you in your deliberations. You, and you alone, are the judges of the evidence and the credibility of witnesses.

It is important, gentlemen of the jury, that you first know the law of the United States upon which this indictment is based and which the defendant, it is alleged

and charged, has violated. I now read from Section 1001 of Title 18, of the United States Code, under which this prosecution is brought: (reads)

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device, a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be . . ." punished according to law.

It is claimed by the Government that the affidavit which is the subject of the charge in the indictment was made under and by virtue of subsection (h) of Section 159, of Title 29 of the United States, and this provision of the United States Code I now also read to you: (reads)

"No investigation shall be made by the Board—" referring to the Labor Board, and this is under the so-called Taft-Hartley Act— "of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of Section 160 of this title, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods."

By rule of the National Labor Relations Board, it is provided that compliance with subsection (h) of Section 159 of Title 29, which I have just read to you, of the United States Code means in a case of a local labor organization that it has filed with the appropriate office of the National Labor Relations Board, (which in this case is El Paso, Texas), the affidavit in question.

Essential elements of the crime charged in the first count of the indictment, each and every one of which must be proved to your satisfaction beyond a reasonable doubt, are:

That the defendant, Clinton E. Jencks, was on the date of the instrument in question, an officer of the Amalgamated Bayard District Union of Mine, Mill and Smelter Workers, Local 890—International Union of Mine, Mill and Smelter Workers;

That on or about April 28, 1950 he signed what is designated as, and purports to be, an anti-Communist affidavit, offered in evidence and marked as Government's Exhibit No. 1;

That the statement in said instrument that he was not a member of the Communist Party was false and that in truth and fact he, the said defendant, was a member of the Communist Party at the time stated in the instrument, that is, April 28, 1950;

That the defendant made the statement that he was not a member of the Communist Party, willfully, knowing it to be a false and that he was in fact at said time, a member of the Communist Party;

That he made the statement with the intent that the instrument in which it was contained should be placed on file with the National Labor Relations Board at its office in El Paso, Texas, for compliance with subsection (h) of Section 159 of Title 29 of the United States Code.

That it was in fact filed, or caused to be filed by the defendant, at the said office in El Paso, Texas.

That the representation that he was not a member of the Communist Party was a material fact.

That it was a matter within the jurisdiction of an agency of the United States, to-wit, the National Labor Relations Board, and that the instrument in question was filed with the office of said Board in El Paso, Texas.

The essential elements of the second count of the indictment are the same as the first, except that the charge is that the defendant made as statement that he was not affiliated with the Communist Party, when in truth and fact, he was affiliated with the Communist Party.

I have said that the Government must prove beyond a reasonable doubt that the defendant made the statement that he was not a member of the Communist Party, willfully, knowing it to be false. By "willfully" we mean "intentionally or deliberately" as distinguished from "accidentally or negligently."

The statute uses the words "knowingly and willfully falsifies." This means that he deliberately and intentionally made the statement with the knowledge that it was false at the time he made it.

I have said that the Government mus prove that the defendant made the statement that he was not a member of the Communist Party contained in the affidavit with intent that it should be placed on file with the National Labor Relations Board for compliance with Subsection (h) of Section 159, of Title 29, of the United States Code, which I read to you. This intent is an essential element of the case and must be proven by all of the evidence beyond a reasonable doubt.

We have no means of looking into a person's mind. The state of a person's mind must be inferred from the things he says and does. A sane man or woman must be presumed to intend what he or she in fact does.

The intent with which an act is done is a mental process and as such generally remains hidden within the mind where it is conceived, and is rarely, if ever, susceptible of proof by direct evidence but must be inferred or gathered from the outward manifestations, by the words or acts of the party entertaining them, and the facts or circumstances surrounding or attendant upon the act with which it is charged to be connected.

Under the terms of this statute, referring again to Title 18, Section 1001, United State Code, which I first read to you, willfulnes is an element of the offense charged and it is necessary for the Government to prove beyond a reasonable doubt that the defendant, Clinton E. Jenck, willfully and knowingly made the alleged statements. This does not mean that the Government must necessarily show that the alleged statements were made with an evil intent or a bad purpose. The phrase "willfully and knowingly" as used in the statute means simply that the alleged statements of the defendant were made deliberately and with knowledge. In other words, if the Government shows beyond a reasonable doubt that the act of the defendant in signing said affidavit, if you believe beyond a reasonable doubt that he did so, was deliberate, voluntary and intentional as distinguished from an act committed through inadvertence, accident, carelessness or negligence, then it has been established that the act was done "willfully and knowingly."

The questions for the jury to determine are:

First, whether the alleged statements of the defendant if he made them are false.

Second, whether the defendant knew or should have known that these alleged statement were false.

Third, whether the alleged statements of the defendant were made willfully—bearing in mind the instructions on the element of willfullness that I have given you in these instructions.

Ordinarily, the question as to whether a person does a thing knowingly and willfully cannot always be proved directly since none of us can read the secrets of the human mind. But willfulness and knowledge, or lack of it, may be inferred from circumstances. Willfullnes and knowledge, or lack of it, may be deduced from a person's conduct, from the things that he does and the things that he says as well as from the surrounding circumstances. This is peculiarly a matter for you members of the jury to determine.

The Government is not required to prove intent by positive and direct evidence. It may be proved by all the facts and circumstance disclosed by the evidence and testimony taken in connection with the case. If you find and believe beyond a reasonable doubt that the defendant signed the affidavit offered in evidence as Government's Exhibit No. 1, with the intent that it should be placed on file with the National Labor Relations Board at El Paso, Texas, for the purpose of compliance with subsection (h) of Section 159 of Title 29, of the United States Code, and that it was so placed on file or caused to be placed on file by the defendant, then you would be warranted in finding that it was a matter within the jurisdiction of the National Labor Relations Board.

In considering whether or not the defendant was a member of the Communist Party, you may consider circumstantial evidence, as well as direct. You may consider whether or not he attended Communist Party meetings, whether or not he held an office in the Communist Party, whether or not he engaged in other conduct consistent only with membership in the Communist Party and all other evidence, either direct or circumstantial, which bears or may bear upon the question of whether or not he was a member of the Communist Party on April 28, 1950.

At this point I give the definition of "circumstantial evidence" as I use that term in this charge. A conviction may be had upon circumstantial evidence as well as upon direct evidence. It is not necessary for you to have testimony of some person who can swear he saw or heard the defendant do the things as charged in the indictment in order for you to find it was done. You can infer the doing of a thing from circumstantial evidence as well as from direct evidence, provided the circumstances are strong enough. However, in arriving at a verdict of guilty upon circumstantial evidence the circumstances must be consistent with each other and must be consistent with the idea of guilt and must exclude every other reasonable hypotheis. In criminal cases the evidence may be either direct or circumstantial, or both. If a witness sees, hears and testifies to the commission of the ultimate fact to be proven that is what we call direct or positive evidence, but it is not always possible in criminal cases to establish guilt by direct or positive testimony; nor is it necessary. The law provides that circumstantial evidence alone, when sufficient to satisfy the minds of the jurors beyond a reasonable doubt, shall justify a conviction.

Now, gentlemen of the jury, if you believe from all the evidence that has been offered in this case that each and every essntial element of the crime charged in the first count of the indictment as I have stated them to you has been proved to the satisfaction of each and every one of you beyond a reasonable doubt, and you believe and find, beyond a reasonable doubt that the defendant, Clinton E. Jencks, was a member of the Communist Party on April 28, 1950, you will then find the defendant guilty of the first count of the indictment.

If, on the other hand, you find that the Government has failed to sustain the burden of proof beyond a rea-

sonable doubt as to any one or more of these essential elements then you will find the defendant not guilty of the first count of the indictment.

I have said that the second count of the indictment contains the same essential element as the first count, except that the charge is that the defendant was affiliated with the Communist Party instead of charging that he was a member of the Communist Party. Webster's New International Dictionary defines "Affiliate" as follows: "To connect or associate one's self with; to adopt, hence usually to bring or receive into close connection; to ally; to unite or attach such as a member or branch." Affiliation, as used in subsection (h) of Section 159 of Title 29 of the United States Code, means something less than membership but more than sympathy. Affiliation with the Communist Party may be proved by either circumstantial or direct evidence, or both.

Now, if you find from all of the evidence that has been offered in this case that each and every essential element of the crime charged in the second count of the indictment as I have stated them to you has been proved to the satisfaction of each and every one of you beyond a reasonable doubt, and you also find beyond a reasonable doubt that the defendant, Clinton E. Jencks, was affiliated with the Communist Party on April 28, 1950, you will then find the defendant guilty of the second count of the indictment. If, on the other hand, you find that Government has failed to sustain the burden of proof beyond a reasonable doubt as to any one or more of these essential elements then you should find the defendant not guilty of the second count of the indictment.

In determining the issues of the case, you will take into consideration all of the evidence adduced at the trial, both positive and circumstantial, bearing upon the respective questions. You should consider the testimony

of all the witnesses, the exhibits and the stipulations of counsel and weigh the evidence thus presented carefully, fairly and impartially.

The Court instructs you and charges you that you must believe and find from all the evidence and beyond any reasonable doubt that the defendant, Clinton E. Jencks, signed the affidavit in question, being Government's Exhibit No. 1, before you can convict him. If you have a reasonable doubt about said Clinton E. Jencks signing said instrument, then you will acquit him on both counts of the indictment.

The Court also instructs and charges you that if you have a reasonable doubt about the defendant, Clinton E. Jencks, being a member of the Communist Party on April 28, 1950, then you will acquit him on the first count of the indictment.

The Court also instructs you that if you have a reasonable doubt about the defendant, Clinton E. Jencks, being affiliated with the Communist Party on April 28, 1950, then you will acquit him on the second count of the indictment.

The witnesses, Jerry W. Ford and Harvey M. Matusow, have testified that for a period of time they received money for services and expenses in furnishing information to the Federal Bureau of Investigation, and you may consider that circumstance when you pass upon the weight and credit which you give them as witnesses, but you are the sole judges of the credibility to be given their testimony. You may take into consideration all the facts and circumstances in determining what weight you shall give their testimony and you are the sole judges thereof.

You are instructed and charged that that part of the testimony of the witness Kenneth Eckert relating to his schooling, training, study and Communists activities at

Moscow, Russia, and later in the United States, was limited to and admitted solely for the purpose of aiding you, if it does, in determining what weight, if any, you care to give his testimony relating to the doctrines and structure of the Communist Party and what the Communist Party in the United States was on April 28, 1950. You will give that part of his testimony such weight as you think it merits, but you will not consider it for any other purpose, and particularly not as evidence pointing to the guilt of this defendant.

The defendant, Clinton E. Jencks, has not testified in this case. While he had the privilege of doing so, he is not required to do so under our law. The burden rests upon the Government to establish a case against the defendant, and he does not have to say anything unless he desires to do so, and you will not take into considerations in your deliberations the fact that the defendant has not testified, and you will not discuss same among yourselves during your deliberations.

In the event you find the defendant guilty on one or both of the counts of the indictment under the instructions I give you, you are not concerned with the question of punishment. Your duties are simply to determine the guilt or innocence of the defendant. The matter of punishment, if any is imposed, is an obligation which rests upon the judgment and conscience of the Court.

You are the sole judges of all questions of fact, the weight of the evidence and the credibility of each and every one of the witnesses. In weighing the testimony of the respective witnesses it will be proper for you to take into consideration the appearance, manner, conduct, intelligence, business and the relationship to the case of all the witnesses on the stand. You may consider their opportunity of knowing the truth and their intelli-

gence or ability to relate it as credibility depends largely upon capacity and opportunity to observe and capacity to tell what is seen or heard. You may consider also their manner of testifying, including the qualities of fairness, candor, feeling, temper, interest, bias or prejudice, or the lack of same; the probability or the improbability of the testimony when considered in connection with the facts and circumstances before you; to what extent, if any, testimony is supported or contradicted by known facts and circumstances, or by other witnesses, and all other facts and circumstances appearing in connection with the testimony given in the trial which will enable you to scrutinize the whole evidence in the light of common sense and experience and arrive at truth and justice.

A form of verdict will be handed you by the Court, in which you will find the defendant guilty or not guilty on each of the two counts of the indictment, as you find the facts to be under your oaths and consciences jurors. Your verdict, of course, must be unanimous and signed by your foreman.

You will retire in charge of the United States Marshal, select your foreman, begin your deliberations, and when you have arrived at a verdict, advise your Bailiff, and the Court will receive you. Are there any exceptions?

Mr. McTernan:

We have exceptions, Your Honor. We need a few moments.

The Court:

All right, the jury will please step out in the hallway a little while, while exceptions are being taken.

(The jury then retired from the Courtroom).

(At this point counsel for both sides approached the bench and conferred with the Court out of hearing of the reporter).

Mr. McTernan:

(After bench conference). If the Court please, pursuant to leave granted us off the record by the Court we except to each and every portion of the Court's charge, and the Court has heretofore allowed us an exception to each refusal to charge in accordance with our requests to charge.

The Court:

If there is any specific exceptions the Court will thank you to state them now.

Mr. McTernan:

We have these exceptions on matters the Court could remedy by amending its charge. First, we except to the fact that the Court read from Section 9(h) the portions of the statute dealing with belief and support. There is nothing charged here with reference to belief and support, only with membership and affiliation. The Court failed in thus reading from the statute to instruct the jury that there was no issue of belief and support here, and this omission is further aggravated by the fact that during the closing summation of the Government it read the entire affidavit, including membership and support provisions, and there has been no charge to the jury that membership and support is not involved in this case. (Pauses.) Mr. Witt calls my attention to the fact that in my previous statement I combined the words "membership and support." I meant to combine "belief and support" on each of the two occasions that I used "membership and support."

Secondly, we except to the fact that the Court's instructions foreclose the issue of whether the document filed here as Government's Exhibit 1 is an affidavit. We submit that that is an issue to be determined by the jury and is a necessary element of the offense in view of the provisions of Section 9(h).

Third, with reference to the Court's definition of membership, we except for the Court's failure to limit or otherwise qualify its definition by the crucial date alleged in the indictment, to wit: April 28, 1950. Further, with reference to the Court's definition of membership, we except because the definition of membership has been imported also into the definition of affiliation, so that the Court has defined affiliation in terms of membership in two ways; first by saying in effect that the jury may consider circumstantial evidence of meetings, holding office, and other conduct consistent only with membership in the Communist Party or any other evidence bearing on the question; and secondly, by using the definition in Webster's Dictionary which includes in the definition of affiliation, "membership." Next, with reference to the Court's definition of membership, we except particularly to that language which, as we caught it, was "other conduct consistent only with membership and any other evidence bearing on the question", on the ground that those two phrases, particularly the second phrase, leaves at large the definition of membership and permits the jury to find membership from anything in the record, and, secondly, constitutes an invasion of areas protected by the First Amendment involving speech, association, and Press. Next, if the Court please, we except to the Court's definition of membership because under the language employed the jury is left free to apply its own definition of membership; and we similarly except to the definition of affiliation because it leaves the jury free to apply its own definiton of affiliation.

Next, we except to the failure of the Court to charge at all with respect to the affidavit which is in evidence here as Government's Exhibit 7, and the evidence pertaining thereto, and the remark of counsel in the course of summation, all this being evidence of a crime other than the crime charged and being highly prejudicial to the defendant.

The Court:

All exceptions are overruled. The Court, however, will instruct the jury, since it may not be quite definite in the charge he gave, that the jury is not concerned with section 3 of the affidavit, which says: "I do not believe in, and I am not a member of nor do I support any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods"; the defendant being charged only with No. 2, which is "I am not a member of the Communist Party or affiliated with such party." Before we bring the jury back in, are you agreed here, gentlemen, on the exhibits, so there is no mistake about the exhibits that were admitted?

Mr. McTernan:

We talked it over with Mr. Hart, and it is satisfactory, as far as the defense exhibits are concerned.

(The jury then returned to the Courtroom).

The Court:

Gentlemen of the Jury, the Court wants to further intruct you on one point that he may not have made clear, and that is that the non-Communist affidavit in question, being Government's Exhibit No. 1, numeral 3 of that instrument says: "I do not believe in, and I am

not a member of nor do I support any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods." Now, the defendant is not under indictment, not on trial, for that, and you will totally disregard and not give consideration to anything in connection with what I have just read, as shown by numeral 3 in the affidavit. The defendant is charged by indictment and is on trial only for No. 2, which reads, "I am not a member of the Communist Party"—being the first count of the indictment, as you now well know; and the second count being the latter part of that sentence in numeral 2, "or affiliated with such party."

With that, gentlemen, the Clerk passes you the indictment and form of verdict, as well as all the exhibits that have been offered; and with that you will go with the Marshal and begin your deliberations and report to the Court when you are ready.

(Whereupon the jury retired to deliberate and later the same day returned into Court a verdict of guilty on both counts of the indictments).

* * * * * * * *

ORAL ARGUMENTS.

In the District Court of the United States in and for the Western District of Texas, El Paso Division.

United States of America,
vs. Criminal No. 54013.
Clinton E. Jencks.

Mr. Broaddus:

May it please the Court; Gentlemen of the Jury:

I believe it will be appropriate to perhaps express the thanks and appreciation of our office and the representatives of the Government for the fine and interested manner in which you have listened to this case and heard the testimony as presented to you. It has been almost two weeks and you have paid very close attention, and it is appreciated by us to the the greatest extent.

I am sure you are acquainted with the fine way that Judge Thomason has handled this case, and all in all the Government feels it is a very fine thing, the manner in which it has been conducted. It is to be appreciated and I wish, therefore, to express that.

Gentlemen, I would like to ask you, if you would, to at this time compare the lives of two men, two American citizens. Beginning in approximately 1946, the lives of these two men came together. They became enmeshed, then they separated, and came together here again; and those two lives became completely intermingled with the lives of you, gentlemen of the jury, as well as mine. Those two men in 1946 were both veterans, they both served in the Armed Forces of the United States, and the Denver, Colorado, in the early months of 1946, those two lives came together at a meeting of the American Veterans Committee, and at that time the life of one of

these two men began to veer, to take an unusual pattern. One of those men was this defendant, Clinton Jencks. At that time he became the Chairman of the A. V. C. in Denver, Colorado, and Edward James Currie was a member of the A. V. C. in Denver, Colorado. Both of them had been veterans, both of them had served for his country. Currie had served with the Infantry, now wears a hearing aid—

Mr. Elfers:

You are getting out of the record. There is no evidence of that.

Mr. Broaddus:

If the jury doesn't know he wears a hearing aid, I am sorry.

The Court:

Let's everybody stay within the record. The witness was on the stand and the jury can exercise their privilege as they care to.

Mr. Broaddus:

Thank you, Your Honor. They met at an A. V. C. meeting. Then they both met at the home of Arthur Barry, Chairman, State Chairman, of the Communist Party of Colorado. They met with eight or nine other people, all of them Communists, in the home of Arthur Barry, in Denver, Colorado, and they were all veterans. It was a closed Communist Party meeting and at that time Arthur Barry delivered a report to the Communist ex-Veterans who were at that meeting, and he told them that members of the Communist Party must join veterans groups and sponsor the aims of veterans so in turn they could sponsor the aims of the Communist Party; and at that

time, gentlemen, you heard the testimony that the defendant, Clinton Jencks, got up and said, "You veterans of the Communist Party will have to join other organizations. There are too many of you in the A. V. C. Spread out and join the other organizations so you can do Communist work in those. There are too many in the A. V. C." And the defendant at that time was the Chairman of the A. V. C. in Denver. Later he became the Regional Director of A. V. C. in Colorado, so "get out of the A. V. C. because we have got it wrapped up; join the other organizations." That was early in 1946, gentlemen, and that is where our two lives began to part. It wasn't long after that that Edward James Currie left Communism, left the Communist-dominated newspaper that he worked for, "The Challenge", and his life slipped into oblivion. He became an ordinary hard worker, an everyday honest hard worker, American Citizen, and we don't hear of him again until he comes again here under oath to testify so you gentlemen can hear his story. But this other life—and you have heard it from the lips of thirteen other witnesses—at that time began a life of trickery, concealment, night meetings, secret meetings, undercover meetings, plans and schemes, and plots to further and direct the aims of the Communist Party of the United States.

After Mr. Currie testified, next in the order of chronology, gentlemen, would be the testimony of Mr. George Knott. Mr. George Knott is a Communist, or he was a Communist. He says he is no longer a Communist at the present time. He said under oath that he was no longer a Communist at the present time. He testified that it was his duty in the early part of 1947 to go to Bayard, New Mexico, and at that place to prepare and lay the groundwork for the oncoming of Clinton E. Jencks to take over the union and Communist situation

at Bayard and Silver City, New Mexico; that he went and did that work as a Regional Director of the International Union of Mine, Mill and Smelter Workers. He went down there and did it, and it was done, and Jencks arrived and took over, and he says that shortly thereafter, shortly after Jencks arrived, that he, George Knott, as a Communist and as a Regional Director of the International Union of Mine, Mill and Smelter Workers, went to Bayard, New Mexico, to meet Clinton E. Jencks, and although his wife was there she left soon thereafter. There were two other people at that meeting. One was Orville Larson, who was Board Member of the International Union at that time for that area. The other man was Morris Graham, who was in no manner connected with the International Union. Morris Graham at that time was the State Organizer of the Communist Party in Arizona, and including the Bayard-Silver City are of New Mexico. Those four men sat down together. They first shook hands and welcome each other, or acknowledged greetings, and then they began the discussion in earnest; they began at that time, gentlemen, to discuss the building up in that area of union activities. Mr. Knott says, "I recall that I pointed out that in building up a union in Silver City it was essential that a Communist Party be built up as the very core of each and every one of those unions." And that Morris Graham, from Arizona, whose only interest in that meeting was as a Communist, reiterated those statements and said it was absolutely essential for an even more important reason, not just the union activities, but it was of dire importance that somebody could replace Clinton E. Jencks should the union ever send him elsewhere. A Communist said that. A Communist said that, gentlemen, not a union man, and Mr. Knott testified that Clinton E. Jencks answered that that was fine, he agreed to do that, and he had

pointed out, "I, Clinton E. Jencks, have these ideas to do that. I intend to first amalgamate all the locals and build them strong for that solid core of Communism; and I intend to begin a newspaper here, print a newspaper, and use that newspaper to further the union and to further Communism. At this time, gentlemen, I would like to quickly refer to the testimony of the witness, the Reverend Jerry W. Ford, in which he said that in Albuquerque, in May of 1949, among other things, in a report by Clinton Jencks; this was 1949, gentlemen, two years after this conversation betwen Morris Graham, Orville Larson, and George Knott; the defendant, Clinton Jencks, reported that, "Now there is someone in the Silver City area who can replace me, and is sharing the responsibilities of a Communist, Arthur Flores." And at that time he reported, "that the union newspaper which I am printing in Silver City can be used for Communist propaganda." I will refer to that later, gentlemen, when I discuss the testimony of Reverend Ford, but I call your attention to that at this time.

Mr. Knott then passes out of the picture but this same chain of Clinon E. Jencks continues in the same manner, gentlemen. We heard from James E. Petersen. He too was an International Representative in the International Union of Mine, Mill and Smelter Workers, just as this defedant. He too was a Communist, just as that defendant, because Petersen told you he knew of his own knowledge Clinton E. Jencks was a Communist, he knew of his own knowledge that Clinton E. Jencks attended closed meetings of the Communist Party, that he attended the Rocky Mountain Convention of the Communist Party in Denver. He testified, gentlemen, that he attended the Rocky Mountain Convention in Denver in the winter of 1947 and 1948. He had no connection with the union in going there. He got permission from Al Skinner, of the union,

to leave his union activities to go to Denver to attend a Communist convention. Petersen travelled there and he sat in attendance at that convention, with Clinton Jencks. He said further that twice he met him at union meetings, wage conferences, or what have you, and after his memory was refreshed by vouchers and things of that nature in the hands of the union, Petersen said that probably it was in February of 1947—1948, I believe, pardon me—February of 1948 at Salt Lake City; that all of the Communists within the International Union got together, as they always do, in a closed meeting in the Hotel Utah in Salt Lake City, to discuss Communist policy and what to do; to discuss Taft-Hartley; to discuss secession movements. And the defendant, Clinton E. Jencks, in this Communist meeting, gentlemen, made a report that "there is no fear of secession in the Southwest area in Silver City where I am." The other Communists were worried about secession, and they discussed it and talked it over in the presence of this defendant. The defendant had things well in control in his area; and again, gentlemen, in approximately June of 1948—whatever the date might be; it was when Henry Wallace spoke in Denver—another union meeting was held and another secret Communist Party meeting was held of the members of the union in Denver, Colorado, and again they discussed secession; again they discussed Taft-Hartley; and again the defendant, Clinton E. Jencks, reported "all is well in the Southwest area." He didn't report that to the union conference, he reported that to the Communists in the closed meeting, "all is well in the Southwest area. You gentlemen heard James E. Petersen testify. You watched the manner in which he testified. You heard his answers, both from questions by Mr. Herring and from questions by Mr. McTernan, and you saw how he answered each of them; and I know you gentlemen can distinguish, cer-

tainly determine, whether he was telling the truth or was not telling the truth. And vouchers were introduced here from the union, I presume in some attempt to dispute the testimony of James E. Petersen that he attended a union meeting in February of 1948. Some minutes were introduced, which he said they appeared to be the proper ones. He was asked to look at the names on there. "Where is the name of Bill Gately, that you say was present? Where is the name of Rudy Hansen, that you say was present? Where is the name of Clinton Jencks, that you say was present?" They didn't even ask him, "Where is your name?" We had to ask him that, gentlemen, and I ask you when you go to your jury room to look at those minutes. In the first place, it lists the official representatives of the meeting, the list says that the official representatives were so and so. Then it mentions that also in attendance were certain other people; and if you doubt that James Petersen was at that meeting; and if you doubt that Gately was there; and if you doubt that Hansen was there; then I say to you, doubt also that the defendant Jencks was there. But I ask you, gentlemen, to consider that testimony of Petersen. Consider all of it. Consider the fact that he came here and requested an opportunity to explain a confused mind that he had had two days previously; that he tried to tie times and places together, and he frankly stated to you gentlemen that he improperly tied one time and one event in with another meeting. But he said this: "I was positively at that convention in June of 1948. ."—that conference, it was —. . "Gately was there; Hansen was there; and Clinton E. Jencks was there; and what was said and done in the Hotel Utah was said and done. The only mistake I made was in saying that that happened in June of 1947, at the same time in Salt Lake City that I called Senator Thomas; but" he said "Jencks' report that the South-

west was fine and no fear of secession there was the truth and it happened. The time might have been mistaken somewhat, the fact and the events were not." Then, further, I presume they intended to refute his testimony by introducing these vouchers to show that he never listed on there his attendance at Salt Lake City. I refer you to those vouchers themselves. They show on there that the offices of the union for which Petersen worked were in Salt Lake City. If it is improper for him not to charge mileage each day he commuted from Midvale to Salt Lake City, twelve miles to go to work, if that is improper, then throw out his testimony, gentlemen; but if that is improper then I wish I would be getting four cents a mile for three miles every day for coming from 705 Mississippi down here to work, and that, gentlemen, is how they have attempted to dispute his testimony. I submit to you, gentlemen, that has not done so and you are the judges of the credibility of that testimony, and you can determine whether or not to believe him in the entire amount of testimony which he gave to you here under oath.

Other union officials know and have heard the defendant, Clinton Jencks, speak. Kenneth Eckert testified, aside from his testimony about attendance of Communist schools in Moscow, that in August of 1947 in Chicago, at a meeting of top Communists within the International Union of Mine, Mill and Smelter Workers, Clinton E. Jencks was in attendance, and the purpose of that meeting of the Communist Party, the Communist members of the union in Chicago, was to determine in advance how the union was going to elect a Vice-President of the Western District, and at that time this defendant stated, gentlemen, "We should support and elect Mr. Smothermon from Carlsbad, because Mr. Smothermon will follow the Communist Party line;" because he will follow

the Communist Party line; and even Mr. Eckert objected, for the sake of unity, for the sake of unity in the union Wesley Madill should be elected Vice-President. So, the Communists again got together at the convention in St. Paul shortly thereafter, and again the defendant Jencks said, "Let us vote for Smothermon because he will do what the Communist Party says. Madill is anti-Communist. Why should we Communists support an anti-Communist?" And so, gentlemen, it came to pass that on the floor of that convention, this defendant nominated Mr. Smothermon for Vice-President of the union, and so Mr. Eckert testified.

The activities of this defendant, however, were not strictly confined to this union. They were wide and varied within the Communist Party, and he Reverend Jerry Ford explained to you why and how, and told you what acts and deeds this defendant had done aside from his union activities. The Reverend Ford first met the defendant Jencks, as I recall, in Albuquerque in 1948, at a meeting of the Communists in connection with the growth of the new party in New Mexico, the Progressive Party. As I recall the date, it was in July of 1948, and the keynote address of this new party in New Mexico was given by the defendant, Clinton Jencks. Shortly thereafter, I believe in August of 1949, again Reverend Ford met the defendant, Clinton E. Jencks. This time it was in the home of a Joseph DeSanti, who he then designated as the organizer for the Communist Party at that time for the city of Albuquerque, New Mexico; that DeSanti was there, Reverend Ford was there, Clinton E. Jencks was there, and other Communists were there. At that time Jencks said, "You Communists can help me by supporting me in my election for Congress. I am running on the Progresstive Party ticket. You can get out and support me and help me,

and I intend to push the Progressive Party as much as I can and work for it as much as I can." You think the defendant was greasing the transmission belt on the engine of revolution at that time, gentlemen?

The next time that Reverend Ford saw this defendant was in Santa Fe in February of 1949. The Communists were applying a little more grease to that transmission belt in Santa Fe. At that time, in Santa Fe, at the De Vargas Hotel, with Joseph DeSanti in charge, they were meeting in order to send delegates to the founding convention of ANMA, the National Association of Mexican-Americans. It is the "Association National Mexicano-Americano", I believe that is why it is "ANMA." And they were meeting in Albuquerque, New Mexico, to send delegates to Phoenix, Arizona, to found ANMA. The Communists were meeting in Albuquerque to send delegates and who did they send? Clinton E. Jencks, Virginia Jencks, Joseph DeSanti, Frances DeSanti, Alfredo Montoya, Isabelle Gonzalez. Each and every one named as a Communist by Reverend Ford, the same Reverend Ford who was reporting at that time to the F. B. I. and giving them names, dates, and places.

Reverend Ford then described how the Communist Party was organized in New Mexico at that time. He said it was very loosely so. There was a northern and a southern district, with DeSanti in charge of the northern district, or northern half, and Clinton Jencks, Silver City, New Mexico, in charge of the southern half of the Communist Party organization in that state. He says, however, in Truth or Consequences, in April of 1949, that the Communists got together at that point and at that time organized in New Mexico, one hundred miles away from us here in El Paso, the State organization of the Communist Party; and at that time they made Joseph DeSanti the State Organizer of the Communist Party,

and they put Clinton E. Jencks in charge, Secretary in charge of labor of the Communist Party of the State of New Mexico. At that time they made Reverend Ford Secretary of Civil Rights. They gave Alfredo Montoya the minority groups, or Mexican-American relations within the Communist group. They gave Virginia Jencks the work with the new party or the Progressive Party in the State of New Mexico. And after that organization they had a meeting in May of 1949 in Albuquerque, at the home of Joseph DeSanti, the State Organizer, and at that time each and every one of them gave reports on what their particular committee had done, or would do, or guarantee to do, and Clinton E. Jencks reported on labor to the Communists in the home of Joseph DeSanti. He reported that recruiting for the Communist Party was going very well but he said, "Gentlemen, there is one thing we Communists have to remember. . ." and I wish you gentlemen of the jury will remember this ". . . we cannot depend on quantity in the Communist Party. We have to depend on quality. We made that mistake in the past. One good Communist is a lot better than ten bad ones." Then he said further, "Gentlemen, in the past we have not indoctrinated our new members sufficiently in Marxism, Leninism, and I intend to do that with those that I recruit." And that was his report. But there is more to it, gentlemen, and I recalled this to you a moment ago. In this report to the State Organization of the Communist Party in Albuquerque in May of 1949, Clinton E. Jencks reported, "The union newspaper at Silver City, New Mexico, is available for the Communist Party in the use of propaganda." And he reported further that he had progressed to the point where someone could now share responsibilities in the Communist Party, Arthur Flores. And what did Mr. Knott tell you, gentlemen? That that was exactly what he

said he was going to do, and now in May of 1949 he has accomplished it. It is a mighty far path from Mr. Currie, who was still sitting up in Denver, minding his own business, and being a good, honest, loyal American. And that is what this defendant reported to his comrades after the Truth or Consequences meeting.

The next thing that the Communists did, at least that Reverend Ford can testify to, they met at the "Nest of the Owl" ranch near Santa Fe, in August of 1949. Their purpose in meeting there, gentlemen, was to found ANMA in New Mexico. They sent six delegates to Phoenix, Arizona for Arizona ANMA. Now they are working for New Mexico ANMA and grease the transmission belt in New Mexico. They had already done it in Arizona. Now, I recall very distinctly what the report of Joseph DeSanti was, gentlemen. It was, "Fellow Communists, go to the ANMA meeting and support it, work for it, but don't go to the foreground. Stay in the background. Stay hidden. Just work hard and see that it succeeds, but don't push yourselves in the foreground." And what did they do? They went. And what happened when ANMA was founded? I imagine some loyal American got up and he proposed a resolution against Communism. What happened, gentlemen? In the presence of this defendant, Clinton E. Jencks, that resolution was defeated by Virginia Jencks. "No, we don't want to pass a resolution against Communism. That is un-American. No, let us keep Communism. Why go into that mish mash?" And that is what happened, gentlemen, and that is what the testimony to you was from this witness stand under oath.

Now, Reverend Ford testified that he was in the Communist Party of New Mexico until September of 1950, and he was Security Officer for the Communist Party of the State of New Mexico. It was his duty to determine

whether or not somebody was deviating from Communist policy, whether or not somebody was making strange contacts with the outside world, and if so, to report it to see that discipline was enacted against that member. He testified that never in the presence of this defendant was any discipline imposed upon him up until September of 1950, gentlemen, uncontradicted. He said further that never, up until September of 1950, was Clinton E. Jencks taken from the State Executive Board of the Communist Party of New Mexico. September of 1950, gentlemen, five months after Government's Exhibit 1 is dated. Government's Exhibit 1 is an Affidavit of a non-Communist Union Officer, signed "Clinton E. Jencks, Box 98, Bayard, New Mexico", and it is dated April 28, 1950. Yet, until September of 1950, up until September 1950, he was never removed from the State Executive Board of the Communist Party, he was never disciplined. And further, gentlemen, I am sure there will be some mention of this, or some attempt to mention it, as to why we haven't done something else, why we haven't proven something else. The Reverend Ford told you that in 1949 and 1950 Communists in New Mexico did not carry cards. They did not carry Communist Party cards, and further, that in 1949, until September of 1950, as Security Officer of the Party, as a member of the State Executive Board of the Communist Party, that to his knowledge there were no membership rolls at that time. So, gentlemen, that is how we explained it. I am sure there is going to be some argument on that in a little while. But that is how we explain it. We explained it from the lips of our witnesses under oath that there were no membership rolls, no cards. This man was never replaced on the State Executive Board. He was never disciplined for any Party defection up until September of 1950. Subsequent to Mr. Ford's last meeting with the defendant Jencks, in

October of 1949, Clinton E. Jencks filed with the El Paso office of the National Labor Relations Board an Affidavit of non-Communist Union Officer—

Mr. McTernan:

We object to this, Your Honor. This is dealing with a crime not charged.

The Court:

I believe the document is in evidence.

Mr. McTernan:

It is in evidence under our same objection, and we are preseving our same objection.

The Court:

Objection overruled.

Mr. Broaddus:

Government's Exhibit 7 is dated October 15, 1949. October of 1949. And he was never removed up to and through September of 1950. He filed Government's Exhibit 7, "Affidavit of Non-Communist Union Officer", which reads: "The undersigned, being duly sworn, deposes and says: 1. I am a responsible officer of the union named below." The union is shown as "Amalgamated Bayard District Union of Mine, Mill and Smelter Workers, Local 890, International Union of Mine, Mill and Smelter Workers." "2. I am not a member of the Communist Party or affiliated with such party. 3. I do not believe in, and I am not a member of, nor do I support, any organization that believes in or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods." It is signed "Clinton E. Jencks" in October of 1949. He signed other Government exhibits which were

used, according to Mrs. Perryman, and which were necessary to support the filing of Government's Exhibit 7. A "Certificate of Union Officers. President, C. E. Jencks. Vice-President, Concepcion Villalobos. Recording Secretary, Jose T. Morales. Financial Secretary, Jose S. Campos. Warden, Manuel Martinez. Trustee, Felipe Huerta. Signed Clinton E. Jencks." This is dated October 15, 1949. "Distribution of Financial Data Certificate" is signed "Clinton E. Jencks" and is dated October 15, 1949. And "G-10", I am not sure, gentlemen, if the applies to the Government exhibit, the first affidavit filed, or not. All of these were taken directly from the records of the N. L. R. B., with two exceptions, and those are the originals taken from the files of the defendant so as to have the originals in evidence as well as the copies which are in the files of the Board. All of these were used, gentlemen, to support the filing in 1949 of the first affidavit.

I think it is pertinent at this time, gentlemen, to submit to you the testimony of the witness Thompson, who was a printer at Bayard, and who printed the union newspaper that Clinton E. Jencks managed and edited at that time, in 1949, at the time the first affidavit was filed. I would like you to consider what the thinking of the defendant Jencks was. What was in his mind. What went through his mind. What did he intend and think at the time he filed the first affidavit, when he uses the wording here on Government's Exhibit 24, which has been introduced in evidence and accepted by the Court—

Mr. McTernan:

We object to that, Your Honor.

The Court:

Yes, it is not accepted by the Court. It has been admitted by the Court in evidence.

Mr. Broaddus:

I am sorry. I beg your pardon. I meant to say "admitted." It says, "Now that our Union has signed the phony affidavits we can defend ourselves."

Gentlemen, this case turns on Government's Exhibit 1, which was filed in April of 1950, and Government exhibits have been introduced to support the filing of Government's Exhibit 1. Letters from Jencks. Letters to Jencks. A. "Certificate of Union Officers." They have changed officers. The President is still Clinton E. Jencks. But now the Vice-President, on April 27, 1950—this is dated April 27, 1950—and it shows, "President, Clinton E. Jencks. Vice-President, Teodoro Santamaria. Financial Secretary, Edmundo Chip. Recording Secretary, Reymundo Armijo. Trustee, Antonio Torres. Warden-Conductor, Juan Castanon." They have changed officers on April 27, 1950, and they filed new affidavits, as you heard the testimony of Mrs. Perryman, on April 28, 1950, and were received a day or two later. Government's Exhibit 5, "Distribution of Financial Data Certificate". Exhibit 6 was a tissue copy in the office of the N. L. R. B. of a letter to Mr. C. E. Jencks, President of Local 890, International Union of Mine, Mill and Smelter Workers, Box 98, Bayard, New Mexico. Exhibit 6-A was a copy from the defendant's files of the original, which was necessary and which went to make up the compliance of Government's Exhibit 1 in order to entitle that union to participate in the activities of the N. L. R. B. and to take advantage of the laws of the United States. These continue, gentlemen, in similar veins. You can look at them when you go to the jury room. Government's Exhibit 13, gentlemen, is dated October 28, 1950, and that was a "Charge Against Employer", filed by Local 890 against the Empire Zinc Company, Hanover, New Mexico, and that is signed "Clinton E. Jencks, President, Local 890." Mrs.

Perryman testified to you that these charges could have never been accepted and never been acted upon if Government's Exhibit 1 had not been filed by the defendant, Clinton E. Jencks. That was her testimony. Mr. McTernan asked her, "What about these things that were filed back in October, weren't they good for one year?" She said yes. She also said, however, that their first Certificate of Union Officers, dated October 15, 1949, pointed out that each and everyone of their terms expired on April 30, 1950, so they filed new ones on April 28, 1950. They did change their officers, everyone, except Clinton E. Jencks. And more than one year after the original affidavit, gentlemen, the affidavit of October 15, 1949, but within one year after April 28, 1950, they filed G-13, a "Charge Against Employer", and this could not have been accepted if Government's Exhibit 1 had never been filed because it was more than one year after G-7, the first affidavit. The first affidavit was filed in October 15, and this G-13 on October 28th, more than one year, and the first affidavit would have no valid effect whatsoever regardless of officers or changes of officer, and Mrs. Perryman testified that they were in compliance and they did use the facilities of the Board under G-13, "Charge Against Employer", based expressly and entirely on Government's Exhibit 1 and the supporting exhibits introduced to you.

So, gentlemen, that takes us up to the time that this defendant filed with the National Labor Relations Board the document that causes him to be charged here in this Court by a Federal Grand Jury. It is still mighty far away from this life of Edward James Currie that we left back in Denver. It is a mighty different life, and I am thankful to say that Currie followed the life that he did. Now, I bring you to summer of 1950, July of 1950, to events that happened at a ranch in New Mexico,

the San Cristobal Valley Ranch, in Taos, near Los Alamos—

Mr. McTernan:
I object to that, Your Honor.

The Court:
Objection sustained.

Mr. McTernan:
We ask that the jury be instructed to disregard that.

The Court:
The jury will disregard the statement about the geography of the ranch.

Mr. Broaddus:
The testimony is that at the San Cristobal ranch, that Harvey Marshall Matusow, a Communist in New York, a man that had been in over thirty-five Communist front organizations, and who at that time was reporting to the Federal Bureau of Investigation, came to the San Cristobal ranch, in July, approximately four months after April 28, 1950, and when he arrived at the ranch, whom did he meet? Of course, he met the defendant Jencks. He was there, and his wife was there, about about fifteen other named Communists were there at the San Cristobal ranch. Fifteen other named Communists, gentlemen, and at that time, when Matusow first arrived, he engaged in a conversation with Jencks and an Abe Marcus, another Communist, who had written a text book about radio. Matusow pointed out that he happened to have that book with him along with a lot of other Communist literature. He said it was peculiar, one of the few Non-Communist books he had was that radio book of Abe

Marcus that he had used himself when he studied radio. And they began discussing that and there they saw the other Communist literature that he had in his trunk. Matusow told Clinton E. Jencks that "I am considering transferring my Communist Party membership from New York to either New Mexico or California." A Communist from New York told that to this defendant four months after he had signed Government's Exhibit 1, the non-Communist affidavit. And do you recall, gentlemen, what this defendant answered? His words were, "Good, we need more active Communists in New Mexico." Those were his words, as testified to under oath by the witness Matusow. Matusow testified further that again, during his stay at that ranch, on either the last Sunday in July or the first Sunday in August, he again spoke to Clinton E. Jencks about Communism and the Communist Party, and he told Clinton E. Jencks, "I have spoken to Craig Vincent, the owner of the San Cristobal ranch, and I have spoken to Joseph DeSanti, the State Chairman of the Communist Party of New Mexico, about transferring my affiliation or my Communist Party status to New Mexico from New York." And again Clinton Jencks said, "Good; good; we need more Communists in New Mexico." Jencks then said, "I am working on a lecture I intend to deliver here at this Communist-infested ranch. I am going to deliver a lecture to all the fine people at this ranch, on the Communist-sponsored Stockholm peace plan, and what do you, Matusow, and the other Communists in New York, do about the Communist-sponsored Stockholm peace plan?" And Matusow says, "We Communists in New York, our club, one of the thirty-five—I don't know which—go to Giant-Dodger doubleheaders and there we paint all the walls and the buildings and sidewalks, and we carried placards,

and we just raised all the unmitigated hell that we could, I imagine. ."—

Mr. McTernan:

I think, Your Honor, there is no point in this argument that counsel is making.

The Court:

Objection sustained.

Mr. Broaddus:

You gentlemen make up your own minds about the Giant-Dodger doubleheader. Then he says, "We go a little further. We have a 'do-day' in New York. On that 'do-day' we do everything that we talked about. We give up everything else and do, do, do for the good old Communists Party "and Clinton E. Jencks says, "That is a good idea. I would like to use that in my lecture here at this ranch next week, and I would like to take that idea back to my fellow-Communists in Silver City." Then Matusow says, "What do you and the Communist in New Mexico do", so Mr. Jencks points to his lapel and says, "See this pin? This pin was given to me by high Communists in the Mexican miners union, and high Communist officials have come from Mexico to Silver City and we have discussed ending the contracts in the United States in the mining industries and the contracts in the mining industries in Mexico at the same time so that we can hamper the Korean War effort of the United States because the Korean War is an imperialistic and unjust war. That is what we Communists do in New Mexico." So said Clinton E. Jencks in August of 1950. August is five months after April of 1950, and that is what this defendant, Clinton E. Jencks, said to Matusow. So Mr. Matusow testi-

fied then that Clinton E. Jencks did give his lecture and he did talk about the role of the trade unions and the drive for peace; and he did talk about "do-day"; and he did talk about the Soviet Union's atomic control plan. You notice, gentlemen, that Communists, or former Communists, or people that have associated with Communists, never say "Russia"?. They say, "The Soviet Union." The Soviet Union's atomic control plan, which Clinton E. Jencks favored. And he said, "Gentlemen, read the books in this library here. Read the papers, the 'Daily Peoples World'. Read that and learn how to work for the Stockholm peace plan." And Mr. Matusow said that library did have non-Communist books in it but it almost had a complete Marxism and Leninism library, including the "Daily Peoples World", "Political Affairs", and other publications of that type.

Now, that wasn't the end of it, gentlemen. Clinton E. Jencks had more to say. Possibly a week later, as I recall, when Matusow had moved from the San Cristobal ranch, from Taos, New Mexico, and he was back at the ranch, he told Clinton E. Jencks, "I have joined ANMA in Taos." And Clinton E. Jencks, five months after he had signed that affidavit, said "ANMA is good and proper Communist Party concentration work. I am a member of ANMA down in Silver City, and we in New Mexico use ANMA for a propaganda sounding board for the Communist Party. It helps a great deal in our trade union work." That is what the defendant said, gentlemen, five months after he had signed a non-Communist affidavit. But that isn't all he did, gentlemen. You heard from the witness, Terrazas, who finally was allowed to explain the real reason why he was kicked out of the union at Bayard, New Mexico. Mr. McTernan wouldn't let him explain but the Court did. He was kicked out for fighting Communism in the union. He said, gentlemen, that Clin-

ton E. Jencks at first begged the union members not to force the officers to sign the non-Communist affidavits. He begged them not to do it, but then in July, 1950, he told them that he had done so. he had signed the affidavits. And, gentlemen, can you doubt at this point that Clinton Jencks signed the affidavits that have been introduced to you here in evidence? Can you doubt that that is his signature there? Is there any question in your mind that on each one of the first sixteen or seventeen Government exhibits, he signed those? Two of the exhibits were brought out by Mr. McTernan himself from Mr. Upton—I beg your pardon, from Mr. Wilson—of the Silver City bank. He asked Mr. Wilson, "Did you bring any of those cards?" So Mr. Wilson said, "Sure, I did. Here they are. I saw him sign them. In fact, I am a banker, and have been all my life. I can look at those signatures and compare them with the others, and I say they were his." Mr. Upton testified that he saw him sign the other card. The affidavit was brought here. All of the supporting documents signed "Clinton E. Jencks", were brought here. We had Mr. Mesnig from Washington, from the F. B. I., whose entire life has been devoted to the detection and analysis of handwriting. These huge exhibits were introduced. You saw them on the board over there. Mr. Mesnig explained in detail for almost an hour how he determined positively beyond any question of a doubt that the signatures on the card, which Clinton E. Jencks signed in the presence of Mr. Upton and Mr. Wilson, were identical and made by the same person that signed all the other Government exhibits. We even went one step further. We got the papers that he had the audacity to file in this Court and took his signature and compared it, and Mr. Mesnig said positively that the person that signed this and filed it in Court is the same person that filed the non-Communist

affidavit and each of the other documents that bear the signature of Clinton E. Jencks. Before we be misquoted on that, gentlemen, I think there is one document that has "Clinton E. Jencks" but before that an "s" in parenthesis, so you know that means in busines language that it has been signed "Clinton E. Jencks" by someone else. So I don't want to be misquoted or be accused that I have tried to suppress the truth, and that is why I point that out about that one paricular exhibit. I certainly don't want to state now that Clinton E. Jencks signed that.

Terrazas said, then that Jencks admitted that he signed that affidavit. He said Clinton E. Jencks, after July of 1950, and in 1951 and 1952 said to the union, "Read the Daily Peoples World. That has the truth in it." What did he tell the people at the San Cristobal ranch five months after he signed the affidavit? "Read the books in this library. Read the Daily Peoples World, and get the truth. All the other newspapers are controlled by the capitalists on Wall Street." That is what he told Jesus Terrazas. The defendant Jencks told Terrazas that and other union members in Silver City, New Mexico, not only in 1950 but in 1951 and 1952. And he also told them in July of 1950 and thereafter, "Work in conjunction with the Mexican union and strike." You recall that testimony that Terrazas gave here under oath. That is what Clinton E. Jencks told the union in July, 1950, and thereafter. Gentlemen, this entire testimony is contradicted by one letter that says that Jencks moved to Hanover, New Mexico in July, 1947—

Mr. McTernan:

It does not, Your Honor.

The Court:

I think everybody ought to state the evidence correctly.

Mr. Broaddus:

Defendant's Exhibits 48, 49 and 50 state on there that Jencks at sometime lived in Hanover, New Mexico. I will let you read them yourselves. I don't want to misquote anything, gentlemen, please understand that. And contradicted by his war record in 1943, and '44, and '45. And that, gentlemen, contradicts the witnesses under oath who spent almost nine days here testifying to you and telling you the activities of Clinton Jencks, and telling about what happened when the lives of Edward James Currie and Clinton E. Jencks separated in Denver, Colorado, when Currie went off to live a quite, peaceful, honest life, and when Jencks went off to Communist meeting after meeting, plotting scheme after scheme, plan after plan, front organization after front organization, up until he signed and placed in operation in El Paso, Texas, with the National Labor Relations Board, Government's Exhibit 1. Of course, he was aided, gentlemen, by some of the most vicious character assassination I have ever been forced to listen to in Federal Court: I also know now what the term "brain-washing" means. I presume that supports the defense, but I submit to you, gentlemen, that the evidence here is full and complete beyond a reasonable doubt that when he left the path and life of Edward James Currie in 1946, Clinton E. Jencks followed one aim and had one purpose, one goal, and that was the Communist Party. And he worked for that day and night—mostly night—toward that aim, up through and continuing past and beyond April 28, 1950, until he stands here charged in this Court at this time; and here in this Court is where the

two lives come together again and become intermingled with ours, right here on this witness stand. Mr. Currie, obscure, quiet, little man, comes in here and testifies and tells you where this whole thing began. The other witnesses have come in and built it up.

Gentlemen, they will argue, I am sure, that there are discrepancies, there are mistakes, there are errors; that our witnesses are not to be believed, each one of them has some reason for lying, or scheming, or falsely swearing under oath. One of them, I guess he got paid for this. He is paid to come here and lie to you and suppress the truth. The Reverend Ford, I presume, came here and lied to you under oath for money, the same Reverend Ford that was compared to Judas Iscariot here in this Court. I presume that is the defense, gentlemen. We have stipulated in evidence here that Reverend Ford received, beginning in 1948, and for the years '50, '51, for the six years, 1948 through 1953, he received a total in those six years of $7,025.00. We have stipulated to that. We don't want you gentlemen to think that he wasn't paid if he was. He was paid, and this is the stipulation we made, that in those six years he got a little over seven thousand dollars. I took the time to divide that out, gentlemen, and that averaged for one year, $1,248.62, gentlemen. Reverend Ford, for his activities, including expenses, dues, placards, whatever he had to do, as he testified to you, got $104.05 a month. And going over further, he got $24.01 per week to carry on activities in behalf of our Government and the F. B. I. for six years. If that isn't a mighty cheap way to protect democracy and fight Communism I don't know what is. I am sure all of you gentlemen agree with me.

The other witness, Knott, was a drunkard and gambler. He testified here he doesn't even drink. Currie was insane, or so nervous he couldn't get along with any-

body. He denied all that. He said he never heard of that, never heard of any such charges or accusations until they were asked of him here on the witness stand. Petersen, I presume, was a liar because he didn't charge expenses for commuting from Midvale to Salt Lake City, twelve miles a day. Eckert. Well, they really didn't cross-examine Mr. Eckert, did they? In fact, gentlemen, they asked for time on Ford, Matusow, and Eckert, so they could get documents to cross-examine them and show what liars and cheats and suppressors of the truth they are, and what happened? When cross-examination came, no questions. They weren't able to find out anything to dispute their testimony, were they?

There is one witness, gentlemen, that is not connected with Communism, not connected with unionism, not connected with ANMA, or the Progressive Party. He is just a plain American citizen. He testified that in the summer of 1947, the exact date unknown, but it was after a baseball practice, he knows that, Jencks' son came up to where he, Jencks, and another man, Irving Gladstone, I believe, were talking and the son had some card with him which they discussed. Jencks was very proud and said, "I think that love of one's mother is the most important thing in this earth." Then I believe Mr. Gladstone spoke up and he said, "That is to be highly respected, but also love of one's country and one's creator is to be respected and loved." And Jencks said, "I don't believe in that foolishness. I don't teach my child to love his country or to honor and respect his creator." And Mr. Brooks was taken aback, saying "That sounds like Communist beliefs." And what was the answer, from the lips of that defendant? "I am a Communist and I am proud of it." That is the defendant that is facing trial here in Court today.

They did attempt in some respect to contradict the witness Matusow, and to do so they went into over a thousand pages of record in the Flynn case, and they turned from page to page, from book to book, to try to contradict him. Then they turned to records in about five or six separate Senate investigations, or Ohio State Committee investigations, went through all of them and tried to find out where they could contradict Matusow. What they find out, gentlemen, was that Matusow did have some trouble trying to vote either in Ohio or New York, he was going from place to place; found out that somebody in New York wrote down McConnell instead of McCombs. We found out that he testified before all these committees under oath, time after time after time. It was available to them to use for cross-examination and never, gentlemen, were they able to contradict him. I beg your pardon, there was one instance. They made him say that he testified once he gave a complete report when he testified that he meant a comprehensive report. And then it was only with great difficulty that Matusow was able to explain that in that same testimony, a few pages further, he had testified that when he stated "complete" he meant "comprehensive." So, gentlemen, those are the witnesses who have testified to you under oath, and that is how they have been contradicted.

Gentlemen, I feel that I have talked long enough. I have tried to sum up the facts to you as I have seen them. I sincerely hope I have done so honestly and fairly. If I have been mistaken, please forgive me, because I would only want to present the truth or the testimony in the record as it came from the witness stand. If I have been in error, please forgive me, and attempt to seek the truth yourselves and determine, gentlemen, whether this defendant is guilty or innocent as he stands

charged here today. When he filed the non-Communist affidavit on April 28, 1950, was he then a Communist, was he then affiliated with the Communist Party? He lived with it and schemed with it, gentlemen, from 1946, and continuing until April 28, 1950. At that time he had never been replaced on the State Executive Board of the New Mexico Communist Party. He never had been disciplined. He didn't carry a card because Communists didn't carry cards. He wasn't on a membership roll because they didn't have membership rolls. There were no minutes taken of any of the meetings because that has been elicited from the witnesses. Can you imagine what would happen if somebody at the Communist Party meetings started taking notes? Think about that for a minute. And further, gentlemen, after he signed this non-Communist affidavit, it wasn't Currie, it wasn't Edward James Currie, it wasn't even me or any of the other veterans in this Courtroom anywhere; it was Clinton E. Jencks that told Harvey Matusow in July of 1950, "Good that you are transferring your Communist Party membership into New Mexico. We need more active Communists here." And it wasn't Currie or any other veteran that said at that time, "I need some help" or "I am working on a lecture. Tell me what you and the other Communists do in New York." He was told about "doday", and he was asked at that time, "What do you and the other Communists do in New Mexico?" And he pointed proudly to his lapel pin and his work with the Communists of the union in Mexico. And it was Clinton E. Jencks and not Currie who made a lecture at the San Cristobal ranch and said, "Read this literature. Read the 'Daily Peoples World'. It speaks the truth." It wasn't Currie, it was Clinton E. Jencks, that told Matusow later that "ANMA is proper concentration work for the Communist Party, and I too am in ANMA in Silver City, and

we use it for a Communist Party propaganda sounding board. It wasn't Currie, gentlemen, that same veteran that came out of the Service in 1946, it was Clinton E. Jencks.

Gentlemen, there will be a great deal of discussion, I am sure, about thought control, and the Constitution, what it means, and how a person can't say what he thinks if I and others like me are going to come in here and persecute Clinton E. Jencks. Gentlemen, I submit to you that when the facts are just as I stated them to you; that no minutes were ever taken at a Communist Party meeting; that there are no membership rolls; that there are no cards; that the defendant was never disciplined through September of 1950, five months after he signed the affidavit; that he was never replaced on the State Executive Board of the Communist Party in New Mexico five months after he signed the affidavit; that he said these things, made these admissions to Harvey Matusow at San Cristobal in July and August of 1950, that "I have a pin that I got for working with the Communists in the Mexican union"; that "I want to take this idea of 'do-day' back to my fellow Communists in New Mexico"; that "I want to know what the New York Communists are doing in working for the Stockholm peace plan"; that "I am a Communist and proud of it." I submit to you, gentlemen, in the face of that testimony the defendant is guilty as charged on both counts.

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Mr. Williams:

If it please the Court, Gentlemen of the Jury:

I am not going to try to make a complete summation of the evidence in this case because it has been rather

brief, almost entirely undisputed, and because Mr. Broaddus has covered it so completely.

Both of my opposing counsel have referred to the circumstantial evidence charge that I expect the Court to give in this case, hoping that there is some person on this jury that doesn't believe in convicting on circumstantial evidence. I call your attention to the fact that this is not based wholly, this case is not a case based wholly on circumstantial evidence, as Mr. Elfers stated that it was. What is the difference between direct evidence and circumstantial evidence? Direct evidence is just what the word implies. It is evidence directly on the point, and this whole record is replete with evidence that Clinton Jencks was a Communist, and that is the issue in this case. Personally, I seriously doubt if a circumstantial evidence charge is even required in this case, but I understand the Court, through an abundance of precaution, is going to give it. You give a charge on circumstantial evidence where there is any point in the case that is not covered by direct evidence. Here it seems that on April 28th, the day this affidavit was filed, the Government hasn't been able to obtain a witness who said he sat in a Communist meeting with Clinton Jencks on that date and, therefore, they tell you our case is based solely on circumstantial evidence; and I say to you that that one tiny little point is the only thing that requires or justifies a charge on circumstantial evidence.

Mr. McTernan has said to you that they are here to bring you the truth in this case, and they want the truth and nothing but the truth. He has left the implication that the Government is trying to suppress evidence here and to hide the truth. Yet what are the facts? The Government has seen fit to bring before you some thirteen witnesses who told you of Jencks' life history from

the year 1946, or his Communistic history from the year 1946 up through the year 1950. What have they brought to you to show you the truth? Not one single witness. Are they trying to give you the truth? This whole evidence here is entirely to the effect that this is a secret organization, and no one knows—

Mr. McTernan:

There is not one word in the record, Your Honor, about that. That is a complete mis-statement of the record.

The Court:

Well, that they had held some meetings in secret.

Mr. McTernan:

I submit there is not testimony in the record that meetings were held in secret. They are injecting into the record things that are not in here.

The Court:

The Court only recalls that there was some witness—perhaps more than one—who testified about secret meetings. Whether or not that was the principle or practice of the Party—

Mr. McTernan:

The testimony was in regard to closed meetings, which is a different thing.

The Court:

The Court will accept that statement, that it was closed meetings.

Mr. Williams:

Secret organization, I said, Your Honor.

Mr. McTernan:

There is nothing in the record about that.

Mr. Williams:

I say there is, and let the jury pass on it.

The Court:

Yes, the jury will pass on it.

Mr. McTernan:

I object to both counsel's statement and the Court's statement.

Mr. Williams:

I say to you that the evidence in this case does not show that we are trying to suppress the truth and he is trying to bring it before you, as Mr. McTernan says. He has asked you not to convict this man because our witnesses are unworthy of belief. That is virtually his entire argument. And what are the facts? What makes those witnesses unworthy of belief? To me, not one thing in the world, except they saw the light when they were in this organization that they know, and the evidence, as you have heard, shows that it teaches the overthrow of this Government by revolution—

Mr. McTernan:

We object to this, Your Honor, as an unfair and completely unsupported appeal to prejudice, and we move for a mistrial.

Mr. Williams:
Your Honor, is—

The Court:
Motion is overruled.

Mr. Williams:
Is he going to object to anything I say?

Mr. McTernan:
I am going to object to anything you say that is not in the record.

Mr. Williams:
He is going to object to my entire speech?

The Court:
Counsel's statements are subject to the testimony.

Mr. Williams:
I submit that Mr. Eckert said that the Communist Party taught this, and I am referring to his direct testimony.

The Court:
All right. That is a question of fact for the jury to pass upon.

Mr. Williams:
That is all I ask. They say there is no direct evidence in this record that this man belonged to the Communist Party. What in the world are they going to do with the testimony of Mr. Currie, Mr. Petersen, Mr. Knott, and several others, Mr. Ford and Mr. Eckert; everyont of whom said they knew him of their own knowledge

to be a member of the Communist Party and that they had set in closed meetings with him. Isn't that direct evidence that he is a Communist? Then I call your attention to Mr. Ford's testimony, who said that he was at a meeting of the Communist Party when Jencks was assigned the Southern District of New Mexico, and was made an officer in the Communist Party. Isn't that direct testimony that he is a member of that Party? We brought him up to eight or nine months before the day he signed this affidavit by sitting in Communist meetings and admitting to Mr. Clay Brooks that he is a Communist, holding offices in the Communist Party, and then they say to you our case is based wholly on circumstantial evidence, hoping that some man doesn't like to convict on circumstantial evidence. Mr. McTernan asked you why assume that he did not withdraw from the Party in the nine months there, in June, July or August, when Ford says he was in a meeting with him, of 1949, eight or nine months before he signed this affidavit? Mr. McTernan says why would you not assume that he had withdrawn? I ask you, on what basis in the world could he ask you to assume that he did withdraw; and there is certainly no evidence of any withdrawal. They ask why don't we bring in the records of the lodge, and so forth, and show whether or not he was a member of the Party. I say because the witnesses here and the undisputed evidence show that there are not any records, and there are not any membership cards, and not any rolls. He wanted to know how you would know if a person was a member of the Elks Lodge at Marfa, if a person he said. I would go to the Secretary of that lodge and ask him to let me see the rolls, and I would see it. Where would you go here in El Paso, or where would you go at Bayard, New Mexico, where this man lived almost to that time, and find whether he is a member

of the Communist Party? The witnesses have told you. I am not telling you that. There is no record of it. All the Government can do is to rely on what evidence the F. B. I. can find, and in this case they have relied on the men who have said in their own words they saw the error of their ways and got out of the Party and went back into the Government of the United States, and they wanted to amend for what wrong they had done it by giving information. Why is Mr. Currie unworthy of belief? Because they insinuated by their questions that he had been to a psychiatrist, and he said no and they made no effort to prove he had. They insinuated by their question, "Weren't you kicked out of the Party?", and he said no, and on cross-examination he said that Graham Dolan, the man who got him into that Party there in Denver, came to his home after he had given notice of withdrawal and beged him to stay in, and they don't dispute it. They say they want to bring to you the truth here, that is the whole reason they are here, and they attack the credibility of each of these witnesses on the flimsiest kind of testimony, and do not attack their testimony as to whether or not Jencks was at any of those meetings by any human in the world. They want you to believe that Petersen lied to you about the date he was at a meeting in Salt Lake City and therefore he is unworthy of belief, and yet Mr. Petersen named many, I believe as many as ten or twelve or fifteen people who were at that meeting, and they haven't brought a single one of them in here to say it didn't happen. Are they trying to bring the truth to you, or are they trying to suppress the truth? They ask you to throw this case in the rubbish pile where it belongs because Mr. McTernan says that Matusow is a professional liar. What are the facts there? He has testified, and it is all brought out here in this record, before Congressional Committee. He testified for several days at another trial that Mr. Mc-

Ternan defended in New York, and he had page after page of his testimony, and he didn't conflict him or cross him in any material fact. They say we are trying to suppress the truth, Mr. Elfers I believe, and that we were scared of this case because we would not tell them everything in advance; because we did not tell them the names of our witnesses, and I think you can easily see why, with the villification and brow-beating that they get with only a day or two preparation what would they get if they had months to work on them?

They tell you that Mr. Petersen is unworthy of belief because he put in a false claim for services, and he flashed before you, without reading it to you or letting you examine it, his wonderful exhibit proving that fact; and it proves emphatically and directly that Mr. Petersen was telling the truth. False in one thing, false in all, and I saw he tried to leave a false impression with you with this exhibit (indicating). First I say to you, the minutes of the meeting which he makes so much of shows that it happened in Salt Lake City on February 16th to the 21st, 1948. Here is the exhibit (indicating) that proves Mr. Petersen is a liar and unworthy of belief. On the 16th he travelled from Midvale to Bingham and he got forty cents for it. That might be on the way to Salt Lake. I don't know where it is, but from the 16th to the 21st, the days of the meeting, there is no charge for any travelling expenses. Don't that indicate to you he was at his office in Salt Lake City? It shows that on the 16th he travelled over to Bingham, but for the other days he got no travel expense because he was at his office headquarters in Salt Lake City. Does that show him to be a liar and does that show him to be false in one, false in all? I say to you that that man Petersen to me made one of the finest impressions of a man trying to tell the truth I ever saw. You get on cross-examination on that witness stand and let Mr. McTernan question you about where you were all during

the year 1946. I know I couldn't tell the very year I had moved into a certain house or the year I moved out, much less to say at which meeting the Elks Lodge discussed something, whether it was on a Saturday of one month or the Saturday of the next month; and that is the only place they have confused a single one of these witnesses. And I know you have noticed that not one of them wanted to be definite on any date; and he told us over and over again, "I do not know whether it was the latter part of '46 or early in '47", and that is the only thing they brought out.

Now, Mr. Knott said he moved down to Arizona he thinks sometime the latter part of '46 or early in '47, and they pinned him down and made him say on cross-examination what his best opinion was and he thought it was the latter part of '46. They brought some pay vouchers in here that showed evidently that he did not move down there 'til March of '47, and I know for sure that he had said it could have been early in '47, but it didn't happen to be until March, two months later, and now therefore he is a liar and a professional and hired by the Government to come in here and try to convict a man on perjured testimony.

That holds true for each one of these witnesses. Not a one of them have been crossed on any material fact. Everyone of those people, those witnesses, named these different meetings that Clinton Jencks was at, and when they named them they named from four to forty, Matusow didn't name all of the forty but he said there were thirty-five or forty people present up there at this San Cristobal lodge run by Communists, and a hotbed of Communists, and he named a dozen or more of them who were there when he said this speech was made by Clinton Jencks favoring the Stockholm Peace Appeal and saying he was going back down to Silver City and put it into effect, and do this and the other on "do-day",

and there at that same meeting he begged and implored the people to read the "Daily Peoples World", the official Communist paper; and not one of those thirty-five and forty Communists who were there and heard that speech have come in here and said it didn't happen, and yet Matusow is unworthy of belief and you should not think a meeting ever happened there or that Clinton Jencks made such a speech. You should assume it didn't happen because Mr. McTernan says that Matusow took twelve dollars one time for an article that he calls plagiarism. Who else has denounced that as plagiarism? I think that is taking money for writing something that you don't write yourself. Isn't that a matter to be settled between the editor of that paper and Mr. Matusow as to whether or not Matusow is entitled to twelve dollars for it or not? And if he got that check, he said he didn't get that check. He said he understood one was issued for him but that he didn't get it, and he didn't sign it; and he also volunteered the information and they squawked their heads off when he said, "I know who did sign it", and they wouldn't let him answer it. Is that bringing before you the truth, or is that suppressing the truth?

Mr. McTernan makes much to do over the fact that we have introduced into evidence here another affidavit that was signed in 1949 of the same nature. That was introduced to you to guide you and help you, if it does, to show you that he didn't accidentally file this second one. He filed an affidavit in '49, and virtually on the same date, or in the same month. I believe, he puts in this union paper of which he is the editor, the manager, and runs it lock, stock and barrel, according to the witnesses; he puts in there in '49. I believe the very month that the first affidavit by him was signed and says, "We have signed the phony affidavits." What does "phony" mean? According to Webster's International Dic-

tionary, it is a slang word in the United States meaning "not straight or genuine; crooked; a fake." In other words, Jencks in his own words, signed by him, in his own paper, says "We. ."—and he is one of them that signed it—"have signed these fake and crooked affidavits." And then they say that has no place in this record, it throws no light on the fact did he sign the second one, is it also a crooked, a fake affidavit? I am not going to waste any time on the point about him signing it. You got this exhibit (indicating) and maybe ten or twelve more there with his signature on them. I think you can recognize his signature clear across the room without any testimony, but you have an abundance of that if you need it.

We have also brought before you the signature of Arthur Flores on his oath and bond, the photostatic copy of it, that he signed and is on file with the Secretary of State at Santa Fe, New Mexico. A photostatic copy showing his real signature and you can look at it clear across the room and see that Arthur Flores signed that one. It has been demonstrated to you here in this trial, and you saw and heard in your presence that we had subpoeaned Arthur Flores, and when it developed here that he was a brother comrade of Clinton Jencks we did not want to vouch for his testimony and we declined to put him on the witness stand and execused him. For the same reason we have not subpoenaed many other witnesses who I know would lie about this.

Mr. McTernan:

I object to that.

The Court:

Objection sustained. The jury will disregard that statement.

Mr. Williams:

They want to bring to you the truth here, and Mr. McTernan criticized us in his argument that we didn't want to bring you the truth because he brought out by Eckert that the Communist Party has a Constitution and then we didn't show it all to you and tell you what it said from top to bottom. I wonder what excuse he has for not bringing it before you himself. He brought out the fact they had one—

Mr. McTernan:

It is my understanding, Your Honor, that the defense is not obligated in law to disprove anything. The prosecutor is obligated to prove his case. I ask that this be stopped.

Mr. Williams:

I am answering him.

The Court:

That is the way I understood it.

Mr. Williams:

Then I ask you to have him sit down.

The Court:

(To Mr. McTernan). The Court understood he was undertaking to answer your statement concerning Eckert's testimony concerning the Constitution.

Mr. McTernan:

I submit it is not a proper answer to point to the fact that the defendant has not chosen to meet what he considers to be a inconsequential case. This is an improper comment on the part of counsel.

Mr. Williams:

Was it proper for you to comment that I didn't do it?

The Court:

We will pass on. Leave it to the jury to pass upon the facts.

Mr. Williams:

Pointing out, gentlemen, some of the facts in this case which are direct evidence and don't touch on circumstantial evidence by any of the definitions in the world. They have all been gone over time and again by Mr. Broaddus and the others, but I ask you to recall that in April, 1949, one year exactly before this affidavit was signed, in Hot Springs, New Mexico Mr. Jencks was put in charge of the Southern District of at least New Mexico and maybe more territory, I am not sure, but he was in charge of the labor movement there for the Communist Party. The others were given other assignments. He was on the State Board. Isn't that direct evidence that he was in the Communist Party, when he was an officer in it, isn't that direct evidence that he was? In 1949, in the home of DeSanti, Jencks made a report there, according to the witness Ford, and he said, "I am coming along fine with recruiting." Recruiting for what? For the Communist Party, and "recruiting is doing fine in my Silver City area", and then both of them say that we had no evidence that he recruited anybody, when recruiting is coming along fine in his area and he is making an official report to DeSanti, the boss of all the Communists in that end of the country. Isn't that direct evidence that he was recruiting? Mr. Knott told you about him having the discussion with Jencks and the others that you are not to pay your dues and have your other members pay your dues over in Arizona instead of somewhere else where they had been paying them. Isn't that

direct evidence that dues were paid by him? Jencks said at one of those meetings, according to the witness Ford, "I am going in for quality with my members. We have taken in too many, and we have not indoctrinated them sufficiently with the theory of Marxism and Leninism, and I am going to bank on that from now on." Isn't that direct evidence that he is in sympathy with, affiliated with, and a member of the Communist Party. Then in that same meeting, according to Mr. Ford, he told them, "I am getting things in shape down there at Silver City and Bayard, and I will now have the newspaper to back up our Communist Party and I am going to sway it in that regard." And then out comes all this propaganda which you can recognize as far as you can see it. Phony affidavits. "I have signed a fake affidavit", he said in that newspaper, and yet they say we have no evidence that he signed the false affidavit.

They say we have no direct evidence that he was a member of the Communist Party. I say to you almost in closing—I have some other time but I don't see any need of boring you and other people with it. You have heard this evidence. We take him from 1946 up to the middle of 1949, attending meetings and working regularly with the Party, and the very month that he signed his first affidavit. He called it a fake and a phony. Then we take him up to three or four months after he signed the other affidavit, up there in this hot bed of Communists at San Cristobal lodge, staying there ten days, he and his wife with them, where I dare say, and I gathered it from the evidence, there was not a human being there that didn't believe in the Communist Party and the Communist doctrine, and there he was up there, the chosen speaker for the occasion, taking up for the Russian-sponsored and Communsit-sponsored Stockholm Peace Appeal. And then they say we have no evidence that he was a Communist on the day he signed this

affidavit. Why should you assume without evidence, and I say they have the evidence among the Communists and the Communist Party of whether or not he withdrew—

Mr. McTernan:
We object to that, Your Honor.

The Court:
Yes, objection sustained.

Mr. McTernan:
And on the basis of that we move for a mistrial. This is now an accusation of the defendant and counsel of being members of the Communist Party.

The Court:
The Court didn't construe it that way, but he will instruct the jury to disregard that last statement by counsel.

Mr. Williams:
So I say that he was still in the Party and we have direct evidence to that effect, when the witness, Mr. Ford, the minister—and I see no reason to say that his work with the church does not comport and run smoothly with his work for the F. B. I. I don't see where that denominates him a Judas Iscariot when, as he expressed it, he got into this thing thinking he was doing right and when hi eyes were opened he quit it and went to the F. B. I. voluntarily. I say if he was ever a Judas Iscariot it was when he was living in this country proposing to love the Constitution and uphold it and at the same time working for another Government, and that was the conclusion he came to and he quit the Party. Mr. Ford says he was the Security Officer for the Com-

munist Party in 1949 and up to September, 1950; April, May, June, July, August, September; some six months after Jencks signed this affidavit that "I am not a member and not affiliated with the Communist Party." Mr. Ford testified that he knew that Jencks had been an officer in the Communist Party and he said, "I, Ford, am the Security Officer". And he was asked, "To your knowledge, during the entire period of time, starting in '49 up to September, 1950, way after this thing was signed, was Jencks ever replaced in the position on the State Board of the Communist Party?" And he said, "Not to my knowledge." Don't you think he would know it? Now why should you assume, as they ask you to, that maybe so he withdrew? I say Mr. Ford puts him in that Party by his own testimony, attending meetings with him and working with him right up to nine months before this affidavit and then several months after it was signed he was still the Security Officer and he says to his knowledge Jencks had never withdrawn so why wasn't he still in there?

Mr. McTernan:

Just a moment. The evidence was not that he never withdrew. That is the whole point of this case. That is a complete mis-statement of the issues.

Mr. Williams:

What is?

Mr. McTernan:

When you said—(To Court). May I address the Court?

The Court:

Yes.

Mr. McTernan:

When counsel said that Ford testified that Mr. Jencks had not withdrawn counsel mis-stated his testimony. The testimony was at that time, as it is now, that he had not been replaced. There is quite a difference between those two things, Your Honor.

The Court:

Well, the jury will determine that.

Mr. Williams:

(To Mr. McTernan). You want to make another speech when I am finished?

Mr. McTernan:

I would be happy to.

The Court:

Well, that is unnecessary.

Mr. Williams:

Gentlemen, I am not going to bore you any longer with this. I would like to call one more thing to your attention. You will not be concerned as to the punishment that is to be inflicted in the case. You are just to answer "guilty" or "not guilty" of the charge in the indictment. The punishment, if any, rests upon the shoulders of the Court, as he will charge you. They will charge you also that the burden is on the Government in this case, as in all others, to prove to you beyond a reasonable doubt that he is guilty but that doubt, as the Court will charge you, does not mean any shadow of a doubt, or a fanciful doubt. It means a serious doubt in your mind, one you would act on in the affairs of your own business; and I submit to you that when

this man did all the things we have shown he did, right up to nine months before he signed this affidavit, and when in October of '49 he had signed another one just like it in the same month, called it phony, false, and fictitious; then I ask you is there any shadow of a doubt in your mind but that he was a Communist on that date and certainly affiliated?

The Court will charge you—there is some difference, I am not too sure what myself—but there is some difference in being a member of a party and being affiliated with it. They say, and I think the Court will charge you, that affiliation is something less than membership but is not just a sympathy with it. You've got to kind of work at it, or something. In other words, I believe I could be affiliated here with the Methodist Church, attend its meetings every Sunday, and work with its people and its program, and never put my membership in the church; I believe I would be affiliated in that church, in its beliefs, by working with it and associating with its members. Hasn't Jencks done that right up to today?

I therefore submit to you that this case has been proven to you almost beyond any shadow of a doubt and certainly beyond any reasonable doubt, and I think you should find him guilty on both counts as charged in the indictment. I thank you.

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DEFENDANT'S REQUESTED CHARGES.

(Filed January 21, 1954).

You have heard evidence as to the record of the defendant as a soldier and officer in the U. S. Air Force in World War II. This evidence must be considered by you together with all the other evidence in the case, and may in and of itself be sufficient to raise a reasonable doubt in your minds as to the guilt of the defendant on both Counts I and II.

(S.) E. B. ELFERS,
(S.) JOHN T. McTERNAN,
Atty. for Def.

Refused

(S.) R. E. THOMASON,
Judge.

Where two inferences from circumstantial evidence may be drawn, one of which is consistent with innocence and one of which is consistent with guilt, you must draw the inference which is consistent with innocence.

(S.) E. B. ELFERS,
(S.) JOHN T. McTERNAN,
Atty. for Def.

Refused

(S.) R. E. THOMASON,
Judge.

If you find that any of the witnesses were employed for money to serve as informers and to make reports

as informers to the F. B. I., you should approach their testimony with caution and weight it with great care.

(S.) E. B. ELFERS,
(S.) JOHN T. McTERNAN,
Atty. for Def.

Refused

(S.) R. E. THOMASON,
Judge.

The prosecution must prove beyond a reasonable doubt that the defendant signed the affidavit, that he swore to it in the presence of the notary public, and that the notary public signed it at the same time as the defendant signed and swore to it. The mere fact that both the defendant and the notary public signed the affidavit is not proof that the defendant swore to it or that he did so in he presence of the notary public.

(S.) E. B. ELFERS,
(S.) JOHN T. McTERNAN,
Atty. for Def.

Refused

(S.) R. E. THOMASON,
Judge.

The gist of the offense in this case is that the defendant filed the false affidavit with the N. L. R. B. or caused it to be a filed or approved its filing. The prosecution must prove beyond a reasonable doubt that the false affidavit was so filed.

The fact of filing by the defendant may not be inferred by you merely from evidence that the defendant signed the affidavit.

Neither may the fact of filing by the defendant be inferred by you merely from evidence that the affidavit was introduced in evidence from the files of the N. L. R. B.

(S.) E. B. ELFERS,
(S.) JOHN T. McTERNAN,
Attys. for Defense.

Refused

(S.) R. E. THOMASON,
Judge.

The prosecution must prove beyond a reasonable doubt that the filing of the affidavit was a matter within the jurisdiction of the N. L. R. B. If what is called "compliance" with the filing requirements of the N. L. R. B., as amended, was not complete, then the matter was not within the jurisdiction of the N. L. R. B., even if the defendant did file his own affidavit, or caused it to be filed or approved its filing. If the evidence does not prove beyond a reasonable doubt that all the other documents required for compliance were filed, including the affidavit of the officers of Local 890, other than the defendant, then there was no compliance, and the matter was not within the jurisdiction of the N. L. R. B. In addition, compliance by Local 890 could not be complete without compliance also by the I. U. M. M. S. Unless, therefore, you are convinced beyond a reasonable doubt that the evidence shows compliance by the I. U. M. M. S., as well as by Local 890, the matter

was not within the jurisdiction of the N. L. R. B., and you must find the defendant not guilty on both counts of the indictment.

(S.) E. B. ELFERS,
(S.) JOHN T. McTERNAN,
Attys. for Deft.

Refused

(S.) R. E. THOMASON,
Judge.

Unless the affidavit was filed for the purpose of inducing the N. L. R. B. to act pursuant to its authority, and unless the N. L. R. B. so acted, the matter was not within the jurisdiction of the N. L. R. B., and you must find the defendant not guilty on both counts.

(S.) E. B. ELFERS,
(S.) JOHN T. McTERNAN,
Attys. for Defd.

Refused

(S.) R. E. THOMASON,
Judge.

Under the first count of the indictment, the defendant is charged with membership in the Communist Party on 4/28/50. One becomes a member of a voluntary organization only by joining it. Unless you are convinced beyond a reasonable doubt that the defendant joined the Communist Party on or before 4/28/50 and was still a member on 4/28/50, you must find him not guilty on Count I.

Joining the Communist Party is a mutual arrangement between a particular person and the Communist

Party. The Communist Party, like other organizations, sets forth its own conditions which a person must accept in order to become a member. The burden is on the prosecution to prove beyond a reasonable doubt what the conditions were for membership in the Communist Party and that the defendant accepted those conditions on or before 4/28/50.

If the prosecution relies on proof that the defendant was a member of the Communist Party before April 28, 1950, or after April 28, 1950, the prosecution must still prove beyond a reasonable doubt that he was a member on April 28, 1950. Evidence that the defendant was a member of the Communist Party in August, 1949, or July, 1950, is not of itself proof that he was a member on April 28, 1950. Even if you are convinced from the evidence that the defendant was a member you may not infer from such evidence alone that the defendant was a member on 4/28/50.

(S.) E. B. ELFERS,
(S.) JOHN T. McTERNAN,
Attys. for Defendant.

Refused

(S.) R. E. THOMASON,
Judge.

Even if you are convinced from the evidence that the defendant attended so-called "closed meetings" of the Communist Party or of members of the Communist Party, such evidence standing alone does not prove or tend to prove that the defendant was at the

time or at any other time a member of the Communist Party.

(S.) E. B. ELFERS,
(S.) JOHN T. McTERNAN,
Attys. for Defendant.

Refused

(S.) R. E. THOMASON,
Judge.

Unless in addition to being convinced beyond a reasonable doubt that the defendant was a member of the Communist Party on 4/28/50, you are also convinced beyond a reasonable doubt that he knew he was a member of the Communist Party on 4/28/50, you must find him not guilty on Count I. In addition to proving beyond a reasonable doubt that the defendant was a member of the Communist Party on 4/28/50, the prosecution must in addition prove beyond a reasonable doubt that the defendant knew he was a member on 4/28/50 and signed and filed the affidavit knowing he was a member.

(S.) E. B. ELFERS,
(S.) JOHN T. McTERNAN,
Attys. for Defendant.

Refused

(S.) R. E. THOMASON,
Judge.

"Affiliation", as used in Count II, is not the same as membership. It is something less than membership and something more than mere sympathy.

Affiliation includes the elements of mutual regonition and dependability upon which the organization and the individual may rely.

It is more than a mere course of conduct. It is a factual and formal relationship.

Mere cooperation with an organization, or intermittent or repeated acts of support do not establish affiliation. Mere cooperation or support do not constitute affiliation.

To constitute affiliation there must be a status of mutual recognition and dependability on the part of the organization and the individual. If any of these elements is lacking, there is no affiliation.

Affiliation is a question of intent, and unless both the individual and the organization intended such a relationship to exist at a particular time, there is no affiliation with that organization.

If at the time of signing the alleged affidavit, the defendant did not consider or believe himself to be an affiliate of the Communist Party as defined above, you must find him not as to Count II of the indictment.

If it is not established beyond a reasonable doubt that there was a relationship known to the defendant as "affiliation", then the defendant must be found not guilty as to Count II.

Unless the jury finds beyond a reasonable doubt that there were standards and qualifications to determine the relationship of affiliation which were in fact known to

the defendant at the time of signing the affidavit, he must be found not guilty as to Count II.

If the prosecution relies on proof that the defendant was affiliated with the Communist Party before April 28, 1950, or after April 28, 1950, the prosecution must still prove beyond a reasonable doubt that he was affiliated with the Communist Party on April 28, 1950. Evidence that the defendant was affiliated with the Communist Party in August, 1949, or July, 1950, is not of itself proof that he was affiliated with it on April 28, 1950. Even if you are convinced from the evidence that the defendant was affiliated with the Communist Party in August, 1949, or in July, 1950, you may not infer from such evidence alone that the defendant was affiliated with it on 4/28/50.

(S.) E. B. ELFERS,
(S.) JOHN T. McTERNAN,
Attys. for Defendant.

Refused

(S.) R. E. THOMASON,
Judge.

Under Count I, the defendant is charged with membership in the Communist Party on 4/28/50, and Under Count II, he is charged with having been affiliated with the Communist Party on 4/28/50. The defendant has not been tried and is not being tried in connection with any other statements contained in the affidavit. You are, therefore, instructed to disregard such other statements.

(S.) E. B. ELFERS,
(S.) JOHN T. McTERNAN,
Attys. for Defendant.

Refused

(S.) R. E. THOMASON,
Judge.

The programs, policies, or activities of the Communist Party, or any other organization, or of members or officers of the Communist Party or of any other orgaization, on 4/28/50, or at any other time, are not in issue in this case and are not to be considered by you as evidence against the defendant either on Count I or Count II.

(S.) E. B. ELFERS,
(S.) JOHN T. McTERNAN,
Attys. for Defendant.

Refused

(S.) R. E. THOMASON,
Judge.

Expressions by the defendant at any time, orally or in writing, of his views or opinions on national or internatonal issues or affairs, or on matters concerning Local 890 or the I. U. M. M. S. W. or their members, are not evidence that the defendant was a member of the Communist Party or affiliated with it on 4/28/50 or at any other time.

(S.) E. B. ELFERS,
(S.) JOHN T. McTERNAN,
Attys. for Def.

Refused

(S.) R. E. THOMASON,
Judge.

If you find the defendant guilty beyond a reasonable doubt on Count I of the indictment, you must find him not guilty under Count II. If you find the defendant guilty beyond a reasonable doubt on Count II of the in-

dictment, you must find him not guilty under Count I.

(S.) E. B. ELFERS,
(S.) JOHN T. McTERNAN,
Attys. for Defend.

Refused

(S.) R. E. THOMASON,
Judge.

You may find the defendant guilty only of the charge contained in the indictment. You are, therefore, instructed to disregard any and all evidence showing or tending to show that the defendant committed similar or other crimes in October, 1949, or at any other time.

(S.) E. B. ELFERS,
(S.) JOHN T. McTERNAN,
Attys. for Defendant.

Refused

(S.) R. E. THOMASON,
Judge.

VERDICT.

(Filed January 21, 1954).

We, the jury, find the defendant, Clinton E. Jencks, Guilty as charged in the first count of the indictment, and Guilty as charged in the second count thereof.

(S.) H. H. JOHNSON,
Foreman.

JUDGMENT, SENTENCE AND ORDER OF COMMITMENT.

(Filed January 21, 1954.)

On Monday, January 11th, 1954, this cause coming on to be heard, came the United States by their District Attorney, and came also the defendant, Clinton E. Jencks, in proper person and by his attorneys, Messrs, John T. McTernan and E. B. Elfers, and thereupon the said defendant was arraigned at the bar of the Court when both parties announced ready for trial, and the defendant, having heard the indictment read, entered his plea of not guilty to the charges contained therein. Thereupon, a jury, to-wit: H. H. Johnson and eleven others, was duly selected, impaneled and sworn, and the trial proceeded with the taking of testimony, and said jury having heard the indictment read, the defendant's plea of not guilty thereto, and having heard the evidence submitted, and having been duly charged by the Court, on January 21st, 1954, retired in charge of the proper officer to consider of their verdict, and afterwards on the same date were brought into open Court by the proper officer, the defendant and his counsel being present, and in due form of law returned into open Court the following verdict, which was received by the Court and is now here entered upon the minutes of the Court, to-wit:

"We, the jury, find the defendant, Clinton E. Jencks, guilty as charged in the first count of the indictment, and guilty as charged in the second count thereof.

(S.) H. H. JOHNSON,
Foreman."

Wherefore, it is considered and adjudged by the Court that the defendant, Clinton E. Jencks, is guilty, as found by the jury, of the offense of having, on or about the 28th day of April, 1950, in the Western District of Texas, in a matter within the jurisdiction of the National Labor Relations Board, an agency of the United States, unlawfully and wilfully made, used and caused to be made and used and filed and caused to be filed with the National Labor Relations Board a false writing and document namely an "Affidavit of Non-Communist Union Officer" (Form NLRB—1081) knowing the same to contain a false, fictitious and fraudulent statement and representation to wit: that he was not a member of the Communist Party, whereas he then and there well knew he was a member of the Communist Party, as charged in the first count of the indictment, and of the offense of having, at the time and within the jurisdiction aforesaid, in a matter within the jurisdiction of the National Labor Relations Board, an agency of the United States, unlawfully and wilfully made, used and caused to be made and used and filed and caused to be filed with the National Labor Relations Board a false writing and document namely an "Affidavit of Non-Communist Union Officer" (Form NLRB—1081) knowing the same to contain a false, fictitious and fraudulent statement and representative to wit: that he was not affiliated with the Communist Party, whereas he then and there well knew he was affiliated with the Communist Party, as charged in the second count thereof.

And said defendant being asked by the Court if he had anything to say why the sentence of the law should not be pronounced against him, and he answering nothing in bar thereof:

It is the order and sentence of the Court that the defendant, Clinton E. Jencks, for the said offenses by him committed, be imprisoned for the period of Five (5) Years in an institution to be designated by the Attorney General of the United States on Each count, said sentences to run concurrently and said defendant is hereby committed to the custody of said Attorney General or his authorized representative.

It is further ordered by the Court that said defendant be temporarily held in custody by the United States Marshal for the Western District of Texas, pending definite designation of the place of confinement for service of the sentence herein imposed, a certified copy of this order to be authority to said Marshall for his action in the premises.

Ordered in open Court at El Paso, Texas, this the 21st day of January, 1954.

(S.) R. E. THOMASON,
United States District Judge.

DEFENDANT'S ORIGINAL MOTION FOR A NEW TRIAL.

(Filed January 26, 1954.)

Clinton E. Jencks, defendant in the above styled and numbered cause, moves the Court to grant him a new trial for the following reasons:—

1. The Court erred in overruling and denying defendant's motion to dismiss the indictment made and presented before announcing ready herein.

2. The Court erred in overruling and denying defendant's motion to dismiss the indictment, because returned by an illegally constituted grand jury, made and presented before announcing ready herein.

3. The Court erred in overruling and denying defendant's motion for a bill of particulars, and in overruling and denying defendant's renewal of such motion, both made and presented prior to announcing ready for trial herein.

4. The Court erred in overruling defendant's motion to require the Government to elect as between the two counts in the indictment filed and presented prior to announcing ready for trial, and thereafter renewed and urged when the Government had completed its evidence and rested.

5. The Court erred in overruling and denying defendant's motion for continuance or, in the alternative, for a change of venue made and presented prior to announcing ready for trial.

6. The Court erred in admitting in evidence over defendant's objection an instrument purporting to be a non-communist affidavit dated in October, 1949, and marked "Government Exhibit No. 7", and over defendant's objection admitting in evidence a portion of an article appearing in a labor publication, marked "Government Exhibit No. 24".

7. The Court erred in denying and overruling several motions for a mistrial in this cause.

The defendant alleges that he was substantially prejudiced and has been deprived of a fair trial by reason of the errors hereinabove alleged, and he therefore prays that he be granted a new trial in this cause.

Respectfully submitted,

(S.) JOHN T. McTERNAN,
(John T. McTernan),
(S.) E. B. ELFERS,
(E. B. Elfers),
Attorneys for Defendant.

615 Caples Building,
El Paso, Texas.

DEFENDANT'S APPLICATION FOR PERMISSION TO FILE AN AMENDED MOTION FOR NEW TRIAL AND TO FIX THE TIME WITHIN WHICH SAME MAY BE FILED.

(Filed January 26, 1954.)

To the Court:

The defendant, Clinton E. Jencks, shows to the Court that he has, within the period of five days authorized by law, filed his original motion for a new trial in this cause. That it is not possible to prepare in proper form a motion containing all the assignments of error which the defendant desires to incorporate therein until such time as he has been able to obtain from the Court reporter a transcript of the proceedings and evidence in this cause. Defendant shows that immediately following the return of the verdict, and the sentence pronounced by the Court, this defendant ordered the prep-

aration of a transcript of the proceedings and evidence, and that the Court reporter is preparing same as rapidly as his duties in this Court will permit.

Defendant, therefore, prays that the Court now enter an order granting him permission to file an amended motion for a new trial, and that in such order the Court allow this defendant a reasonable time, after he has been furnished a transcript of the proceedings and evidence, within which to file such amended motion.

Respectfully submitted,

(S.) JOHN T. McTERNAN,
(John T. McTernan),

(S.) E. B. ELFERS,
615 Caples Building,

El Paso, Texas.

Attorneys for Defendant.

ORDER GRANTING PERMISSION TO FILE AN AMENDED MOTION FOR NEW TRIAL AND FIXING THE TIME WITHIN WHICH SAME MAY BE FILED.

(Filed January 26, 1954.)

It appearing to the Court that the defendant, Clinton E. Jencks, within the period of five days authorized by law, has filed herein his original motion for a new trial, but that it is not possible for the defendant to properly prepare and incorporate in such motion all the assignments of error that he desires to present therein until such time as he has been furnished a transcript

of the proceedings and evidence by the Court reporter, It Is Now, upon the application of the defendant, The Order of this Court that the defendant be and he is hereby granted leave to file an amended motion for a new trial in this cause. Such amended motion shall be filed within the sixty days from the date the transcript of the proceedings and evidence in this cause is furnished the defendant by the Court reporter.

Done In Open Court this 26th day of January, 1954.

(S.) R. E. THOMASON,
United States District Judge.

AMENDED MOTION FOR A NEW TRIAL AND IN ARREST OF JUDGMENT.

(Filed June 24, 1954.)

Comes now the defendant, Clinton E. Jencks, pursuant to leave of Court granted January 26, 1954 and makes this his amended motion for an order granting a new trial and an order arresting judgment upon the following grounds:

1. The Court was without jurisdiction of the offense charged and the indictment was void and of no effect in that the indictment was returned by a grand jury composed of grand jurors drawn from a jury box from which the names of women were purposefully and systematically excluded, all as more particularly set out in defendant's "Motion to Dismiss Indictment—Illegally and Unconstitutionally Constituted Grand Jury", the affidavit of E. B. Elfers in support thereof, and

the testimony of the jury commissioner adduced in support thereof.

2. The indictment does not charge an offense in that

(a) It fails to allege facts showing that the affidavit allegedly made, used and filed by defendant was permitted or required by law.

(b) It fails to allege facts showing that defendant, at the time the affidavit was allegedly made, used and filed, was an officer of a labor organization within the meaning of section 9(h) of the National Labor Relations Act, as amended (29 U. S. C. A. Sec. 159(h)), or otherwise.

(c) It is not alleged in Court I that defendant was on April 28, 1950, a member of the Communist Party or that defendant "well knew" that he was, on April 28, 1950, a member of the Communist Party.

(d) It is not alleged in Count II that defendant was, on April 28, 1950, affiliated with the Communist Party or that defendant "well knew" that he was, on April 28, 1950, affiliated with the Communist Party.

(e) It fails to allege the facts by virtue of which defendant "well knew" that he was a member of the Communist Party.

(f) It fails to allege the facts by virtue of which defendant "well knew" that he was affiliated with the Communist Party.

(g) The allegation of membership in the Communist Party in Count I and the allegation of affiliation in Count II, are mutually exclusive and repugnant; the two counts cannot stand together in the same indictment.

(h) The word "affiliated" as used in Count II and as used in Section 9(h) of the National Labor Relations Act, as amended (29 U. S. C. A. Sec. 159(h)), is so vague, uncertain and indefinite as to set no intelligible standard of proscribed conduct and to give no fair or adequate notice of the offense charged, all in contravention of the due process clause of the Fifth Amendment to the Constitution of the United States.

(i) Section 1001 of Title 18 and the Labor Management-Relations Act of 1947, particularly Section 159(h) of Title 29 pursuant to which the purported false writing an ddocument were executed are unconstitutional on their face and as applied to the defendant herein, and in particular are violative of Article I, Section 9, Clause 3, and of the First, Fifth, Ninth and Tenth Amendments to the Constitution of the United States.

3. The Court erred in denying defendant's motion for Bill of Particulars and motion for reconsideration of ruling and order denying motion for Bill of Particulars in that it deprived defendant of a specification of the outward manifestations of his state of mind concerning his membership and affiliation as alleged in the indictment.

4. The Court erred in denying defendant's motion for an order directing the United States, before trial, to elect whether it would go to trial on either Count I or Count II of the indictment.

5. The Court erred in denying defendant's motion for an order directing the United States, at the conclusion of its case in chief, to elect whether it would seek to have defendant held guilty of either Count I or Count II of the indictment.

6. The Court erred in denying each of defendant's motions for issuance of a pre-trial subpena under Rule 17(c) of the Federal Rules of Criminal Procedure as follows:

(a) The motion submitted October 23, 1953.

(b) The motion for pre-trial subpena directed to Harold L. Hudson, Officer in Charge, 33rd Sub-Regional Office, National Labor Relations Board.

(c) The motion for a pre-trial subpena directed to Charles F. Herring, U. S. Attorney and Holvey Williams, Assistant U. S. Attorney.

7. The Court erred in denying defendant's motion for continuance or in the alternative for a change of venue.

8. The Court erred in denying defendant's challenge to the array of trial jurors and motion to quash and dismiss the list, array and penal of trial jurors.

9. The evidence is insufficient to show that the affidavit alleged in the indictment was filed by the defendant or at his direction or request, or with his approval.

10. The evidence is insufficient to show that the affidavit was filed in a matter within the jurisdiction of an agency of the United States, in that there was no evidence offered or received that the International Union (i. e. "the international labor organization of which it (Local 890) is an affiliate") had accomplished the requisite filing under the statute.

11. The evidence is insufficient to show that the defendant made and filed an affidavit, whether the same was false or not, and thus is insufficient to show that defendant made or filed anything that was in a matter within the jurisdiction of the National Labor Relations Board.

12. The evidence is insufficient to show that the defendant knew he was a member of the Commuist Party on April 28, 1950.

13. The evidence is insufficient to show that the defendant knew he was affiliated with the Communist Party on April 28, 1950.

14. The defendant was substantially prejudiced by the Court's rulings, over objection, admitting evidence tending to establish the commission of a crime not charged and having no necessary relationship to the crime charged, to wit, Government's Exhibits 7, 8 and 9.

15. The defendant was substantially prejudiced by the Court's rulings, over objection, admitting evidence tending to establish the commission of a crime not charged and having no necessary relationship to the crime charged, to wit, the testimony of the witnesses Currie, Ford, Brooks, Knott, Petersen, Eckert, and Thompson, and Government's Exhibit 24.

16. The defendant was substantially prejudiced by the Court's rulings, over objection, admitting the testmony of the witnesses, Currie, Ford, Brooks, Knott, Peterson and Eckert because such testimony was remote in time and not probative of either membership or affiliation at the date alleged in the indictment, and because such testimony was highly inflammatory, oppressive, and injurious in light of the political climate of the times and the community passion and prejudice as more particularly set out in defendant's motion for a continuance or, in the alternative, a change of venue.

17. The Court erred in denying defendant's request, made at the close of the prosecution's opening statement, that the government be required to state as part of its opening those outward manifestations of defendant's state of mind concerning his alleged membership and affiliation upon which the government intended to rely in seeking his conviction. (Tr. 5)

18. The Court erred in denying defendant's request for production and inspection of the reports to the Federal Bureau of Investigation prepared by the informers Matusow and Ford and for the release to the defendant of such portions of those reports as served the evidentiary purpose of impeaching the testimony of Matusow and Ford. (Matusow, Tr. 663-676; Ford, Tr. 873-875)

19. The Court erred in quashing the subpena duces tecum served upon the witness Ford calling for the production of his personal copies of his federal and state income tax returns for the taxable years 1948, 1949 and 1950. (Tr. 551-555)

20. The Court erred in denying defendant's motion for mistrial based upon the testimony of Brooks for the reason that this testimony had no probative value on any issue tendered by the indictment, was patently calculated to be inflammatory and injurious by presenting defendant as hostile to deep going religious and nationalistic mores. (Tr. 362, 363)

21. The prosecution purposefully deprived defendant of a fair and impartial trial by repeatedly offering and presenting to the hearing of the jury, in blunt defiance of the Court's ruling, highly inflammatory statements dealing with defendant's alleged opposition to and plan to sabotage the nation's war effort in Korea. And the Court erred in denying defendant's motions for mistrial based thereon. (Tr. 252-256, 560-563, 901, 902, 913-922)

22. The Court erred in failing to charge the jury as requested by defendant.

23. The Court erred in failing to charge the jury concerning the probative issue if any of the October 15, 1949 affidavit (Government's Exhibit 7) and all other evidence pertaining thereto. (Tr. 1049)

24. The Court erred in charging the jury that compliance with the non-communist affidavit provisions of the National Labor Relations Act (29 U. S. C. A. 159(h)) "means in a case of a local labor organization that it has filed with the appropriate office of the National Labor Relations Board . . . the affidavit in question". (Tr. 1049) Said charge is erroneous in that it fails to instruct the jury that compliance with the section in a case of a local labor organization cannot be accomplished or in-

deed attempted until, beforehand, there has been compliance with the section by the international organization with which the local organization is affiliated. By virtue thereof the jury was instructed that a local labor organization could bring itself into compliance with this section by its own act and irrespectitve of its international organization.

25. The Court's charge was in error in that it permitted the jury to consider as "circumstantial evidence" of membership in the Communist Party on April 28, 1950, testimony and other evidence purporting to deal with membership, position and participation in the Communist Party in the years from 1946 to July of 1949. (Tr. 1054) This evidence as a matter of law, cannot support the inference of membership on April 28, 1950.

26. The Court's charge was in error in that it permitted the jury to consider as "circumstantial evidence" of membership in the Communist Party on April 28, 1950, testimony concerning purported admissions by defendant of membership or participation in the Communist Party in July; 1950. (Tr. 1054) This evidence as a matter of law cannot support the inference of membership on April 28, 1950.

27. The Court's charge to the jury was erroneous in that it permitted them to base a finding of membership in the Communist Party upon evidence of speech, opinion, and association and thereby construed the statute so as to:

(a) abridge the rights guaranteed defendant by the First Amendment;

(b) render the statute so vague, uncertain and all-inclusive as to define no ascertainable standard of guilt, thereby depriving defendant of due process of law in violation of the Fifth Amendment.

28. The Court's charge to the jury touching on the issue of membership was erroneous in that it was so vague and uncertain as to the criteria of membership and the evidence on which the jury might base a finding of membership that the Court failed to instruct the jury on an essential element of the offense charged.

29. The Court's charge was in error in that it permitted the jury to consider as "circumstantial evidence" of affiliation with the Communist Party on April 28, 1950, testimony and other evidence purporting to deal with membership, position and participation in the Communist Party in the years from 1946 to July of 1949. (Tr. 1054) This evidence as a matter of law cannot support the inference of affiliation on April 28, 1950.

30. The Court's charge was in error in that it permitted the jury to consider as "circumstantial evidence" of affiliation with the Communist Party on April 28, 1950, testimony concerning purported admissions by defendant of membership or participation in the Communist Party in July, 1950. (Tr. 1054) This evidence as a matter of law cannot support the inference of affiliation on April 28, 1950.

31. The Court's charge to the jury was erroneous in that it permitted them to base a finding of affiliation with the Communist Party upon evidence of speech, opinion, and association and thereby construed the statute so as to:

(a) abridge the rights guaranteed to defendant by the First Amendment;

(b) render the statute so vague, uncertain and all-inclusive as to define no ascertainable standard of guilt, thereby depriving defendant of due process of law in violation of the Fifth Amendment.

32. The Court's charge to the jury touching on the issue of affiliation was erroneous in that it was so vague and uncertain as to the criteria of affiliation and the evidence on which the jury might base a finding of affiliation that the Court failed to instruct the jury on an essential element of the offense charged.

33. The Court's charge was in error in that it provided the jury with an incorrect, inconsistent and incomprehensible definition of "affiliated" (Tr. 1056) in that:

(a) It at one point adopted a definition of affiliation that equates that term with membership.

(b) It at another point stated that affiliation "means something less than membership".

(c) It adopted dictionary criteria of affiliation which are mutally inconsistent and contrary to the definition of the term adopted by the Supreme Court of the United States.

34. The Court's charge erroneously instructed the jury that it might upon the same evidence reach the mutually inconsistent and repugnant conclusions that defendant was a "member of" and was "affiliated with" the

Communist Party in that it at one point equated affiliation and membership (Tr. 1056) and at another point permitted the jury to consider attendance at Party meetings, holding office in the Party, engaging in "conduct consistent only with membership in the Communist Party and all other evidence . . . which bears or may bear upon the question of whether or not he was a member". (Tr. 1054)

35. The Court erred in charging the jury that if it found "that the defendant signed the affidavit offered in evidence as Government's Exhibit No. 1, with the intent that it should be placed on file with the National Labor Relations Board at El Paso, Texas, for the purpose of compliance with subsection (h) of Section 159 of Title 29, of the United States Code, and that it was so placed on file or caused to be placed on file by the defendant, then you would be warranted in finding that it was a matter within the jurisdiction of the National Labor Relations Board." (Tr. 1054) This charge is erroneous in that it makes the test of a "matter within the jurisdiction of the National Labor Relations Board", the act of filing and the subjective purpose of the accused, thereby ignoring the criteria of jurisdiction laid down in the statute (29 U. S. C. A. 159(h)) and the decided cases.

36. The defendant was irremediably prejudiced by the references in the Government's summations to the execution of the 1949 affidavit, and to defendant's declaration purportedly to the effect that his affidavit was "phony". (Tr. Pros. Arg. pp. 19-22, 52-58; Government's Exhibit 24)

37. The defendant was irremediably prejudiced and his right to effective counsel abridged by the statement in the prosecutor's closing argument, referring to defendant and his counsel, that "they have the evidence among the Communists and the Communist Party of whether or not he withdrew." (Tr. Pros. Arg. p. 58)

38. The defendant was irremediably prejudiced by the prosecutor's assertion in his closing argument that the defendant has been "working with" "and associating with" the Communist Party "right up to today", the more especially when this statement followed assertions by the prosecutor that the Communist Party is a "secret organization", that it "teaches overthrow of this government by revolution", that defendant's career in the Communist Party had been one of "plotting", "scheming", "trickery" and "concealment" and that defendant's activities had brought him "near Los Alamos", (Tr. Pros. Arg. pp. 62, 43, 44, 4, 33, 38, 25).

Respectfully submitted,
(S.) E. B. ELFERS,
(E. B. Elfers),
(S.) JOHN T. McTERNAN,
(John T. McTernan),
Attorneys for Defendant.

ORDER DENYING MOTION FOR NEW TRIAL AND IN ARREST OF JUDGMENT.

(Filed June 29, 1954.)

On this, the 29th day of June, 1954, came on to be heard the motion of the defendant, Clinton E. Jencks, to grant him a new trial and an order arresting judgment. The Court, having heard the arguments of counsel and considered the law involved, is of the opinion that said motion should be denied.

It is, therefore, Ordered, that said motion be, and the same is hereby overruled.

(S.) R. E. THOMASON,
United States District
Judge.

NOTICE OF APPEAL.

(Filed June 29, 1954.)

Clinton E. Jencks, the defendant, resides at 3819 Jason Street, in the City of Denver, Colorado.

His attorneys are E. B. Elfers, address: 615 Caples Building, El Paso, Texas, and John T. McTernan, address: 112 West 9th Street, Los Angeles 15, California, El Paso address, 615 Caples Building.

Charged by indictment containing two counts with having violated Section 1001 of Title 18, of the United States Code, Count One charging that in a noncom-

munist union officer affidavit made and filed with the National Labor Relations Board he falsely swore that he was not a nember of the Communist Party, and Count Two charging that in the same affidavit he falsely swore that he was not affiliated with the Communist Party, defendant, Clinton E. Jencks, was on January 21, 1954, found guilty on both counts in a jury trial, and on said 21st day of January, 1954, a judgment of conviction was entered and a sentence of five years imprisonment imposed on each count, such sentences to run concurrently.

The defendant is in the custody of the United States Marshal at El Paso, Texas, pending perfecting his appeal and the giving of an enlargement bond.

The defendant, Clinton E. Jencks, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the above stated judgment and sentence.

Dated at El Paso, Texas, this 29th day of June, 1954.

(S.) CLINTON E. JENCKS,
(Clinton E. Jencks),
Defendant,
(S.) E. B. ELFERS,
(E. B. Elfers),
(S.) JOHN T. McTERNAN,
(John T. McTernan),
Attorneys for Defendant.

Receipt of a copy of the foregoing notice of appeal is acknowledged this 29th day of June, 1954.

CHARLES F. HERRING,
United States Attorney,
By (S.) HOLVEY WILLIAMS,
Assistant U. S. Attorney.

ORDER FIXING THE AMOUNT OF ENLARGEMENT BOND.

(Filed June 29, 1954.)

Upon motion of the attorneys for the defendant, Clinton E. Jencks, It Is Ordered by the Court that the enlargement bond on appeal for the above named defendant is hereby fixed in the sum of Ten Thousand ($10,000.00) Dollars, such bond to be in form acceptable to and approved by the Clerk of this Court if cash bail is furnished, otherwise the sureties on such bond to be approved by the United States Commissioner.

Ordered In Open Court at El Paso, Texas, on this 29 day of June, 1954.

(S.) R. E. THOMASON,
United States District Judge.

COST BOND ON APPEAL.

(Filed June 29, 1954.)

Know All Men By These Presents:

That I, Clinton E. Jencks, as Principal, am held and firmly bound unto the United States of America in the full and just sum of Two Hundred Fifty ($250.00) Dollars, which amount I have on this date paid into, and which amount is now on deposit in the registry of the Clerk of the United States District Court for the Western District of Texas, El Palso Division, to be paid to the United States of America, to and for which payment

well and truly to be made I bind myself, my heirs, executors and administrators, by these presents.

Executed at El Paso, Texas, on this 29th day of June, 1954.

Whereas, at the October Term, 1953, of the District Court of the United States for the Western District of Texas, El Paso Division, in a suit pending in said Court between the United States of America as plaintiff and Clinton E. Jencks as defendant, a judgment and sentence was rendered against said Clinton E. Jencks, as follows: On the 21st day of January, 1954 the said Clinton E. Jencks was convicted of violating Section 1001 of Title 18, of the United States Code, and upon such conviction was on said 21st day of January, 1954, sentenced to confinement of five years on each of two counts, said sentences to run concurrently, and the said Clinton E. Jencks has filed notice of appeal to the United States Court of Appeals for the Fifth Circuit from and to reverse such judgment and sentence:

Now, the condition of the above obligation is such that if the said Clinton E. Jencks shall prosecute said appeal to effect and answer all costs if he fails to make good his plea, then the above obligation shall be void, else remain in full force, virtue and effect.

(S.) CLINTON E. JENCKS,
(Clinton E. Jencks),
Principal.

The above bond approved this 29th day of June, 1954. Money received same day.

MAXEY HART,
Clerk of the U. S. District Court,
By (S.) PAULINE G. SILVEUS,
Deputy.

ENLARGEMENT BOND ON APPEAL.

(Filed June 29, 1954.)

Know All Men By These Presents:

That I, Clinton E. Jencks, as Principal, am held and firmly bound unto the United States of America in the full and just sum of Ten Thousand ($10,000.00) Dollars, which amount I have on this date paid unto, and which amount is now on deposit in the registry of the Clerk of the United States District Court for the Western District of Texas, El Paso Division, to be paid to the United States of America, to and for which payment well and truly to be made I bind myself, my heirs, executors and administrators, by these presents.

Executed at El Paso, Texas, on this 29th day of June, 1954.

Whereas, at the October Term, 1953, of the District Court of the United States for the Western District of Texas, El Paso Division, in a suit pending in said Court between the United States of America as plaintiff and Clinton E. Jencks as defendant, a judgment and sentence was rendered against the said Clinton E. Jencks as fol-

lows: On the 21st day of January, 1954, said Clinton E. Jencks was convicted on two counts of having violated Section 1001 of Title 18, of the United States Code, and upon such conviction was sentenced to confinement of five years on each of said counts, said sentences to run concurrently; and, Whereas, the said Clinton E. Jencks has filed notice of appeal to the United States Court of Appeals for the Fifth Circuit from and to reverse the judgment and sentences in the aforesaid suit:

Now, the condition of the above obligation is such that if the said Clinton E. Jencks shall appear in the United States Court of Appeals for the Fifth Circuit, at New Orleans, Louisiana, instanter and there remain from day to day and from term to term of said Court until finally discharged therefrom and shall abide by and obey all orders made by the said United States Court of Appeals for the Fifth Circuit in said cause, and shall surrender himself in execution of the judgment and sentence appealed from, as said Court may direct, if the judgment and sentence of the District Court against him shall be affirmed by the United States Court of Appeals for the Fifth Circuit, and if he shall appear for trial in the District Court of the United States for the Western District of Texas, El Paso Division, on such day or days as may be appointed for a retrial by said District Court, and shall abide by and obey all orders made by said Court, provided the judgment and sentence against him shall be reversed by the United States Court of Appeals for the Fifth Circuit, then the above obligation shall be void, otherwise to remain in full force, virtue and effect.

(S.) CLINTON E. JENCKS,
(Clinton E. Jencks),
Principal.

The above bond approved this 29th day of June, 1954.

MAXEY HART,
Clerk of the U. S. District Court,
By (S.) PAULINE G. SILVEUS,
Deputy.

MOTION TO EXTEND TIME TO FILE RECORD ON APPEAL.

(Filed July 22, 1954.)

To The Court:

In the above styled and numbered cause comes now the defendant, Clinton E. Jencks, and shows to the Court that because of the length of the record in this case, the Clerk will be unable to prepare the record on appeal within forty days after June 29, 1954, the date notice of appeal was filed herein, and defendant, therefore, moves the Court for an order extending the time for filing the record and docketing the appeal until the 20th day of September, 1954, which date is within ninety days after the filing of notice of appeal herein.

(S.) E. B. ELFERS,
(E. B. Elfers),
(S.) JOHN T. McTERNAN,
(John T. McTernan),
Attorneys for Defendant.

615 Caples Building,
El Paso, Texas.

ORDER EXTENDING TIME TO FILE RECORD ON APPEAL.

(Filed July 22, 1954.)

On this 22nd day of July, 1954, It Is Ordered that the time within which the appellant, Clinton E. Jencks, shall file the record on appeal herein and docket this cause be and the same is hereby extended to and including the 20th day of September, 1954.

(S.) R. E. THOMASON,
Judge.

DESIGNATION OF RECORD ON APPEAL.

(Filed August 5, 1954.)

To The Clerk Of The Court:

Please prepare and issue as defendant's designation on record on appeal a certified transcript of the following matters and documents in the above entitled and numbered cause:

1. Indictment.

2. Defendant's motion to dismiss indictment on account of illegally constituted grand jury, including attached affidavit of E. B. Elfers.

3. Defendant's motion to require U. S. Attorney to furnish list of witnesses.

4. Defendant's motion for discovery and inspection.

5. Defendant's motion for issuance of pretrial subpoena.

6. Defendant's motion to compel election as between counts in the indictment.

7. Defendant's motion for bill of particulars.

8. Defendant's motion to dismiss indictment.

9. Order overruling motion to dismiss indictment.

10. Order overruling motion to require U. S. Attorney to furnish list of witnesses.

11. Order overruling motion for pretrial subpoena.

12. Order overruling motion to compel election as between counts.

13. Order overruling motion to dismiss indictment on account of illegally constituted grand jury.

14. Order overruling motion for bill of particulars.

15. Defendant's subpoena directed to Harold L. Hudson (for 11-25-53.).

16. Defendant's subpoena directed to Charles F. Herring, U. S. Attorney, and Holwey Williams, Assistant U. S. Attorney (for 11-25-53).

17. Stipulation in re above subpoenas dated 11-19-53.

18. Defendant's motion to reconsider ruling and order denying motion for bill of particulars.

19. Defendant's motion for reconsideration of order denying motion to dismiss.

20. Defendant's challenge to petit jury array, together with affidavit of E. B. Elfers attached.

21. Defendant's motion for continuance, or, in the alternative, for a change of venue, together with Exhibits "A" to "K", both inclusive and affidavit attached.

22. Arraignment.

23. A transcript of all evidence, including all oral motions, exceptions and objections, and the Court's orders thereon.

24. Defendant's motion for instructed verdict and the order thereon.

25. Defendant's requested instructions, together with the orders thereon.

26. Transcript of argument of Government counsel. Francis C. Broaddus and Holvey Williams, Assistant U. S. Attorneys, as transcribed by Court stenographer and furnished herewith.

27. Charge of the Court.

28. Verdict.

29. Judgment and sentence.

30. Defendant's original motion for a new trial.

31. Defendant's application for permission to file amended motion for a new trial.

32. Order granting permission to file amended motion for a new trial.

33. Amended motion for a new trial and in arrest of judgment.

34. Order denying and overruling amended motion for new trial and in arrest of judgment.

35. Defendant's notice of appeal.

36. Order fixing amount of enlargement bond pending appeal.

37. Defendant's cost bond on appeal.

38. Defendant's enlargment bond on appeal.

39. Motion to extend time for filing record and docketing cause.

40. Order extending time for filing record and docketing cause.

41. This praecipe.

42. Clerk's certificate.

(S.) E. B. ELFERS,
(E. B. Elfers),
(S.) JOHN T. McTERNAN,
(John T. McTernan),
Attorneys for Defendant.

615 Caples Building,
El Paso, Texas.

Received copy of the foregoing designation of the record on appeal this 5th day of August, 1954.

(S.) HOLVEY WILLIAMS,
Assistant U. S. Attorney.

DESIGNATION OF CONTENTS OF RECORD ON APPEAL.

(Filed August 30, 1954.)

Plaintiff, the United States of America, hereby designates the following to be included in the record on appeal.

1. The testimony of Lawrence Stevens, Jury Commissioner, re Motion to Dismiss Indictment—Illegally and Unconstitutionally Constituted Grand Jury and defendant's challenge to the petit jury array.

2. Closing arguments of John T. McTernan.

3. This designation.

CHARLES F. HERRING,
United States Attorney,
(S.) HOLVEY WILLIAMS,
(Holvey Williams),
Assistant U. S. Attorney.

Copy of this designation mailed this 30th day of August, 1954, to E. B. Elfers, Caples Building, El Paso, Texas, attorney of record for defendant.

(S.) HOLVEY WILLIAMS,
Assistant U. S. Attorney.

In the District Court of the United States in and for the Western District of Texas, El Paso Division.

United States of America,
vs. Criminal No. 54013
Clinton E. Jencks.

Be It Remembered, that on January 11, 1954, before the selection of the jury, the following testimony was adduced in connection with a defense motion challenging the array:

LAURENCE E. STEVENS, was called as a witness by Mr. McTernan, and, having been duly sworn, in answer to questions propounded, testified as follows:

Questions by Mr. McTernan:

Q. What is your full name, sir?

A. Laurence Edwin Stevens.

Q. Are you now the Jury Commissioner of this Court?

A. I am, sir.

Q. How long have you held that position?

A. About twenty-six years. A little over.

Q. And in connection with your position as Jury Commissioner do you participate in the selection of names that go into the jury box from which the Grand Jury and the trial jury panels are chosen?

A. Some of them I do. I submit names to the Clerk to send out questionnaires for their return as to their qualifications.

Q. Do you know whether questionnaires are sent out to persons other than those whose names you submit to the Clerk?

A. I presume there are. I have never checked them. I am sure that there are because there are many names I don't know. Many names I submit I don't know either. I know that they live in this community.

Q. Now, this jury box is the same box from which both Grand Jury and trial jury panels are selected?

A. They are both drawn from the same box, yes, sir.

Q. And do you submit names to the Clerk each year, is that the way it is done?

A. Yes, sir, a lot of times, sometimes there is no fixed rule. We do it at odd times, when it is necessary to clean out the box and put in new names. We do that usually along in August, as a general rule, when they have more time in the Clerk's office.

Q. Now, Mr. Stevens, what sources do you use for obtaining names to submit to the Clerk for questionnaires?

A. I use various sources.

Q. What are they?

A. City directory, telephone directory, newspapers.

Q. Do you use any particular system in selecting names from the City Directory?

A. None whatsoever, just go through it at random.

Q. Tell us how you use the City Directory in selecting names.

A. I just start with the alphabet and go down. No system at all. Just pick out just an odd number in there.

Q. Do you go down every so many names and take some?

A. No, sir, no system whatsoever. We usually try to keep the jury box with anywhere from seven to nine hundred names in it, and after we have had a drawing of a panel, we fill in on that, and the Clerk might ask me to fill in fifty names, and I just go down at random, no particular system whatsoever. Just happens to be

wherever they happen to hit. The Clerk also gets names from the postmasters out in the district other than El Paso and Hudspeth counties. I have a great deal of business up and down the valley in this country, and I know a great many people who wouldn't be in the City Directories that I also select, from Fabens, Clint, San Elizario, Socorro, Ysleta, and up to the valley in El Paso County.

Q. Now, when you say you take names from the newspapers, what do you mean by that?

A. Oh, just happen to notice them in the newspaper, no particular system.

Q. You mean the names appear in some news article?

A. Possibly. Or in the society page, or just anywhere. Might be an ad even. Might be a classified ad even. Just happened to occur to me that there is a name to go into the jury box.

Q. Do you have any standard or tests you use in picking those names?

A. I do not.

Q. After you pick the names I take it that there is a questionnaire sent out?

A. There is a questionnaire sent out by the Clerk of the Court for his assistance.

Q. And that questionnaire asks a number of questions with reference to the qualifications?

A. Yes, sir, age and qualifications as to the length of residence; whether they are a freeholder in the State or a householder in the county, and general qualifications; and their age.

Q. Would it be the same questions that Mr. Williams asks of the panel before him this morning?

A. Approximately the same, yes, sir.

Q. With a few additions concerning age?

A. Yes, sir. And occupation, also.

Q. Now, when those questionnaires are returned do you review them?

A. No, sir, I do not.

Q. Who does?

A. The Clerk or his assistant.

Q. Do you perform any function, Mr. Stevens, with reference to determining whether or not those who have filled out the questionnaires are qualified for jury service?

A. I do not, no, sir.

Q. Well, do you perform any function concerning their questionnaires after their return?

A. I do not.

Q. How do the names go from the questionnaire to the jury box?

A. From the questionnaires the Clerk or his assistant puts on a small slip of paper, used to be that we only put the name; now we put their address and occupation from those questionnaires; then after those questionnaires have been returned and these slips have been made out, the Clerk and myself together, we usually put in a slip alternatively into the box before we ever draw.

Q. But you don't have anything to do with the process from the time you give the names to the Clerk until—

A. Until after we put them back in, I never examined them until we made out the slips, no, sir.

Q. Now, in the course of this operation that you have described, from the time the names are given to the Clerk up to the time the slips are put in the jury box, do you apply any test with reference to the sex of the prospective juror?

A. None whatsoever.

Q. Do you ever submit names of female persons to the Clerk?

A. If I have it has been unknowingly.

Q. In other words, you intentionally omit names of female persons, is that right?

A. I try to obey the law of the Federal Court and the Courts of the State of Texas, the law of the State of Texas, the Constitution, with reference to the qualifications.

Q. And, as you understand the law, it doesn't permit women to serve as jurors in this Court?

A. That is my understanding of the law; that they should be male citizens over twenty-one years of age.

Q. And for that reason, then, neither you nor the Clerk send out questionnaires to women with reference to jury service?

A. If they have been it has been unknowingly so.

Q. And if they have been they would be eliminated before their names go into the box, is that correct?

A. That is correct.

Q. Who examines the names of persons to whom questionnaires are sent in determining whether or not they are qualified for jury service?

A. Well, for many years Mr. Phillips, who is now deceased, was the Deputy Clerk in this Court, and I think that he went through that physical process, the mechanics of it.

Q. And who does it now?

A. I don't know who does it now. Mrs. Silveus has been here for the last year and a half and I imagine that she does the duties that Mr. Phillips performed for years.

Q. In any event, it is someone connected with the Clerk's office?

A. That is right, the Clerk himself or his deputies.

Q. Do you have any connection with the excusing of persons from jury service for any reason whatsoever?

A. None whatsoever.

Q. Does anyone in the Clerk's office that you know of?

A. None whatsoever. That is up to the Judge.

Q. Are any names of persons for jury service eliminated on the basis of the data appearing on the questionnaire?

A. Date of what?

Q. On the data, on the basis of the data appearing on the qestionnaire?

A. I never heard of that, no, sir.

Q. Have you any idea, Mr. Stevens, as to the percentage of names in the box that come from El Paso County?

A. No, sir, I don't. I have never taken that into consideration.

Q. Are you familiar with the general composition of the names in the jury box?

A. I am familiar with them after they come out. I pay no attention to what is in there. After they come out I notice them, and after I see a panel up here I notice who they might be; but as to what is in the box. I have no idea, couldn't tell you the name of anybody that is in there right now.

Q. Do you know whether the panel that has been drawn for this case is representative of the names in the entire jury box?

A. It is, sir. It was representative of the entire cross section of all those that have been in the jury box.

Q. So that would you say that so far as racial composition is concerned the composition of the panel is approximately the same as the composition of the names in the jury box?

A. I wouldn't know on that because that is something we don't pre-determine, as to what their racial condition may be. I have seen Negroes in here. I have seen Mexicans. I have seen Chinamen in the Courtroom, after we have drawn them, but as to when they go in we don't know.

Q. Do you know whether the composition of the panels so far as occupational grouping is concerned is substantially the same as the composition of the names in the entire jury box?

A. They are, sir. They will come out in due course as a cross section of the different occupations.

Q. Well, is it representative of the jury box in terms of the proportions of people in the various occupational groups?

A. I rather think it is, from looking over these panels, and after I have seen them in the Courtroom for a good many years. I think they are representative citizens of the community from all occupations, races and creeds.

Q. Mr. Stevens, I understood your last answer to say that so far as you knew the percentages of people in the various occupational groupings in the panel was representative of the proportions of people in the occupational groupings in the community, is that what you intended to say?

A. I would imagine it is, because they all come into the general situation.

Q. Do you have any information, Mr. Stevens, as to the percentage of employed people who are engaged in manual occupational groupings in El Paso County?

A. No, sir, but I believe we could go in the last few panels and see that those that have appeared in here for jury duty, and we will find that it has been a pretty good sampling of all the community.

Q. Are you aware of the fact that persons employed in manual occupational groupings, according to the 1950 Census, constituted about fifty-five percent of the employed people in El Paso County?

A. I haven't gone into 1950 figures at all, no, sir.

Q. Are you familiar with the fact that persons in this panel engaged in manual occupational groupings constitute approximately ten percent of the panel?

A. I don't know what their occupations are. I haven't examined it.

Q. Do you know whether you or the Clerk take any steps to see whether the groups represented in the jury box approximate in general size and composition the occupational groupings of the employed people in the community?

A. I don't believe we have gone into that sort of statistical matter.

Q. Do you know or are you familiar with the ratio of owners and managers of businesses to total employed people in El Paso County, 1950 Census?

A. There are lots of people that have titles. That doesn't mean that they aren't just plain workers and—

Q. Will you answer my question?

A. No, sir. I have not gone into any statistical study in that manner.

Q. Do you know that in the present panel there are approximately sixty-seven percent of mangers?

Mr. Williams:

Your Honor, I believe I will object to that as assuming that that is true. If the man wants to testify to it I believe that will be different.

Mr. McTernan:

I meant to ask him if he knew.

The Court:
The Court will let him answer. He has an idea he don't know.

A. I don't know.

Mr. McTernan:
We have no further questions.

Mr. Williams:
No questions.

(Witness excused.)

. . . . . .

DEFENSE CLOSING ARGUMENT BY MR. JOHN T. McTERNAN ONLY.

In the District Court of the United States in and for the Western District of Texas, El Paso Division.

United States of America,
vs. Criminal No. 54013
Clinton E. Jencks.

Mr. McTernan:
May it please the Court, gentlemen of the jury. I am glad I got that out right. I just reminded myself this morning that this is the first time I addressed an all-men jury and I was afraid I would begin "ladies and gentlemen of the jury" just out of habit.

I would submit to you at the outset, gentlemen, that if the prosecution in this case did not have the scare words "Communism", "Moscow", "planning", "scheming", and "night meetings" to befog the air in this Courtroom, this case would be laughed out of Court. Before we get too far away from this idea of night meetings and planning, and scheming, let me ask you a couple of questions. Does the American Legion here in El Paso ever meet at night? Does it ever discuss any problems at night? Does the Democratic Party ever meet at night? Does it ever discuss in the dark of night what to do about its problems? I seem to remember that President Truman vetoed Taft-Hartley. Is it conceivable that the Democratic Party met in the dark of night to discuss ways and means of supporting President Truman. And perhaps there is an Elks Lodge out here in El Paso. Do you suppose they ever meet at night? Gentlemen, please, let us not be fooled about meeting at night, plotting, and scheming.

Gentlemen, I speak to you earnestly this afternoon. I do that out of a profound sense of obligation to help you in the search for truth by making every appeal I can based upon the fact and reason on behalf of my client, Mr. Jencks. I do so out of a profound awareness of the preciousness of human liberty. In this particular case I do so also out of what I conceive to be the preciousness of Mr. Jencks' liberty because it is true that we have here an individual as unique and as precious under our law as any other human being. We have all had an opportunity to make some observation of him in the Courtroom. You noticed him sitting here day after day, his general demeanor. I think he has appeared to you as a quiet, personable, rather attractive young man; certainly not the caricature of a night plot-

ter that the newspapers have been dinning in our ears month after month, and that the prosecution wants to import into this Courtroom by screaming "night plotter" at you. You know something about his background, his war record was admitted into evidence. He received seven or eight high honors from his Government when he was ready to lay his life on the line to preserve democracy in World War II. You remember the citations, "who in the face of great danger performed his duty with a high degree of professional skill, a high degree of devotion to duty." We know that when he came out of the Army he apparently didn't try to cash in on any kind of veterans benefits. He became a labor organizor, and as a labor organizer he was assigned there to New Mexico, where you and I both know from our general knowledge that there is no glory and no prestige. It is hard work, like Petersen said, twelve to eighteen hours a day; doing what? Fighting for equality of Mexican-American workers. Fighting for economic security. Fighting for peace. This is what this particular human being did. And we know, then, since he was in that part of New Mexico from early '47 to sometime in '53, and because we know that he fought in the war with such distinction, that something like ten years of Mr. Jencks' life has been given to the defense, the preservation, and the extension of those aspects of democracy which you and I are sworn to uphold. And it is because I see in Mr. Jencks this kind of individual that I approach his defense with the seriousness and the earnestness that I so do.

Now, gentlemen, the cry of Communism is easily raised today. It is easily made. It is cried from one end of the land to the other. The problem is to prove it. And, here, the proof has to be fact, competent fact,

admissible in a Court of law. There is no room for McCarthyism here. The Court's instructions won't permit a person to be labeled "Communist" just because he is called "Communist." Here we seek the truth; calmly, dispassionately, and in accordance with the rules of fair play that have been enshrined in our law and will be given to you in the instructions of the Court. Let's leave it to McCarthy and Brownell to cry "Communist" of a retired President, of an opposite party. Let's leave it to people like that to claim the headlines. Let the politicians seek advantage out of partisan political bigotry paraded in the newspapers in the guise of fact. Here we deal only with facts, and the reasonable inferences to be drawn from facts. Our position in this case is that there are no facts, and there are no legitimate reasonable inferences to support the charges which the prosecution has made here. Let us recall, you in your function and I in mine, that today, above all days in the course of this case, we are the seekers of the truth. We must find the truth by the discernment of proof and the application of that proof to the instructions of the Court. We are oath-bound, ladies and gentlemen of the jury—see, I just made that mistake—we are oath-bound to reject the pressures of the screaming headlines. We are oath-bound to reject the pressures of scare words. We are oath-bound to reject fear and prejudice. Today is our turn to defend democracy, gentlemen. Let us hope that we too may defend democracy with cool courage in the face of danger, with a high degree of professional skill and with high devotion to duty.

We have looked at Mr. Jencks, the man, so far as our observation here in the Courtroom, so far as the record of the case permits us. Let us look for a moment at the people whose word the prosecution would rely

on to send this human being to jail; and in the course of doing this, let us keep in mind that gratuitous observation about brain-washing that was made this morning. As I understand the concept, "brain-washing", and you and I have read just about the same things in the newspapers, it has to do with repeating the thing over and over again to somebody until by some kind of process, or hypnosis, or fear, he takes it into his mind and treats it as his own. I thought I heard more than the pitter-patter of brain-washing in the constant repetition about "Communism", "Communist" "Moscow", "night meetings", "plotting" and "scheming", from the mouth of the person who dared to raise "brain-washing" in a Court of law. Let us see as we go over these things where brain washing fits into the prosecution's case. We remember Mr. Ford, Reverend Ford, spiritual guide and interpreter of the New Testament to his flock, the man whose Christian ethics permitted him to accept pay to become an informer; the man who, leading the double life of minister of God and informer to the F. B. I., made many friends in the Communist Party, some of them close and intimate friends, people of the highest type, he says, people that he loved and admired. And he expressed his love and his admiration in some what the same way that Judas Iscariott expressed his by kissing Christ, turning them over to the F. B. I. What were Ford's thirty pieces of silver, gentlemen? He talked about performing a patriotic duty and he said that when he was first asked about this, that he did his patriotic duty only for expenses. Remember, we asékd him what his expenses were? Well, he had to pay dues, contributions at fund-raising affairs; he had to pay for placards, and this kind of thing. Well, this sounded enormous, this high-type, devoted man, doing his bit for only what it cost him out of his pocket. Then we

pressed him a little harder, and he said that he was paid a flat sum each month and he took his expenses out of that and if there was anything left over he kept it, and if the expenses were too high he got the additional reimbursement. Well, what are the facts, gentlemen? We got them by subpoenaing the Government's records and they brought the facts in to us. According to the records, he was paid both for expenses and for services. What did he get for expenses in the six-year period?—$466.7. What did he get for the services against these friends whom he loved and admired, who were the highest-type people?—$7,025.00. I guess since Iscariot's time inflation has raised the monetary designation of thirty pieces of silver to seven thousand and twenty-five dollars. That is patriotism that pays, isn't it, gentlemen? Especially when you are in debt. Especially when you are having trouble meeting those monthly payments. And aren't we entitled to ask, concerning Rev. Ford, didn't he do this for money, for personal gain? Doesn't he have a financial interest in what he has done and what he is doing, and, therefore, isn't his word suspect? I think it is. I submit to you that this is the normal conclusion that anyone would draw about a witness like this.

Let us see how it works out, gentlemen, in his testimony, and let us think about brain-washing again. Do you remember how glib that memory was on direct examination? Oh, it was precise. It clicked off meetings and dates and people just like that. Do you remember how many times he said "I don't recall; I don't remember" on cross-examination? Isn't it interesting that in all of these meetings, five of them that he testified to, he could only remember the same four names—DeSanti, Jencks, Montoya—there was a fourth name but it slips

my mind. Finally, when he was pressed and pressed on cross-examination, he could remember one more name at one meeting—Isabelle Gonzales. Repetition? Brain-washing? Twelve or fifteen people at everyone of those meetings and he could only remember the same four each time, five times in a row. Was Reverend Ford brain-washed, or was he trying to brain-wash you?

Let us turn to Mr. Knott. I don't want to spend a great deal of time on him. Mr. Elfers explained our position with reference to Knott this morning. In summary, it is very clear, he is supposed to have made this trip down to Bayard or Silver City in late '46 or early '47. We finally got him to say it was sometime between September, 1946, and January 31, 1947, and during that entire period, gentlemen, he was a minimum of fifteen hundred miles away, as evidenced by his own vouchers. Here they are (indicating). You might look at them when you go into the jury room. They will certainly be available to you. Fifteen hundred miles away from the place where he said he was during the entire period that the meeting could have happened. Brain-washing? Who washed that story of the meeting into Knott's brain? I submit that these vouchers, gentlemen, wash it out of our brain.

I don't want to spend much time on Mr. Petersen either, in view of Mr. Elfer's remarks this morning, but let us not be misled. Petersen said he was awfully sure about that meeting in Salt Lake City in May or June of 1947. He could remember because of the campaign against Haft-Hartley and it was the first and only trans-atlantic telephone call he had ever made; and he was a sharp one; he was full of little things about these incidents that fixed them in his mind, like the two-tone blue

Studebaker that he said he drove to Denver in. And then, when he was about to undergo cross-examination, when his cross-examination had been deferred to give us an opportunity to get at the facts, he wanted to come in here and change his story voluntarily, and it turned out from the record; not just any records, gentlemen; Mr. Petersen's records; that he was in charge of the meetings, supervised the preparation of the meetings, communicated with the national office of the union about them. His minutes showed that he wasn't at that meeting—excuse me, his minutes showed that Jencks was not at that meeting, that Gately was not at that meeting, and that Powers was not at that meeing. Now, what is the significance of that? He said that the Communist meeting—as he described it, the closed Communist meeting—at the Hotel Utah, the swanky Hotel Utah, was attended exclusively by people who had been to the union meeting. So we show that the key union person who was supposed to have been at the Hotel Utah meeting wasn't there, and two more out the six that Petersen could remember were there as delegates to the union meeting and also present at the swanky Hotel Utah meeting were not there. "Well," said Mr. Petersen, "I can explain that. Mr. McTernan's cross-examination has jugged my memory." I suppose that is where my idea of indulging in brain-washing came in. He says, "Ah, I remember now. It wasn't in May or June. All that stuff I told about the campaign against Taft-Hartley and the trans-atlantic telephone call as the reasons for fixing it in my mind, all that goes out the window. I sat around in my underwear at the hotel and thought about it." Now he says it was late '47 or early '48, and we tied it down to February 16th or 17th. Again he said the same thing. The people who went to the night-time Communist meeting were union people who were delegates

or visitors to that conference. Well, the minutes show that Jencks, and Gately, and Hansen, who were supposed to be union delegates or visitors to that meeting and were at the so-called Communist meeting, weren't there. But this isn't all. Petersen really walked into the fire this time because his vouchers show that he wasn't even in Salt Lake. And don't be confused, gentlemen. Don't take Mr. Broaddus' pat on the back on Petersen for not claiming expense money for going to Salt Lake from Midvale, Utah. Mr. Petersen said and admitted that these vouchers show that the travel on those days when the conference was supposed to be held occurred from Midvale to other places—Bingham, Lark, and other places—and he didn't get to Salt Lake. According to his own signed record he didn't travel from Midvale to Salt Lake until February 28th, twelve days after he says he was there and saw Jencks in the Hotel Utah. Well, apparently, brain-washing goes on in El Paso hotels where men sit around in their underwear. Maybe what went on in this Courtroom just served to wash out of our brains some more of this fabrication, and I think the Court will give you an instruction, gentlemen, that you are the exclusive judges of the credibility of these witnesses, and that one of the rules that you may apply in determining their credibility is that a witness proven false in one thing may be taken to be false in everything. Petersen was false in one thing. He tried to take it away and was false in another. Are we free in the light of that record to assume that he just made a mistake? You see, this credibility problem, gentlemen, is very important because this is the first of the two points that I want to make to you this afternoon. This is the point that you haven't got anything here that you can believe.

Let us not spend any more time on Brooks. Mr. Elfers covered that completely this morning. Jencks just wasn't in the project, that's all, and Brooks was very definite that Jencks was in the project and that it happened in May. Jencks, or rather, Brooks didn't know who Jencks was until Jencks moved into the project.

Let us turn to Mr. Matusow, actor and writer. I would call him a pro if I were making an evaluation, gentlement, the man who makes a living out of anti-Communism. This is the real super-patriot, who assisted in the election of another super-patriot named McCarthy up in Wisconsin in 1952, and other super-patriots in other parts of the country, and he did it on this story of anti-Communism that he has become so glib at; getting to be a pretty good game. All in all he took in ten thousand dollars in this little venture. How much of it went for expenses he wasn't very clear on, but what he included as expenses he didn't bother to tell you. Gentlemen, with all of the caution, all of the careful consideration that I can give this as a lawyer of considerable practice, I tell you that I think we have demonstrated to you in Matusow a man who is a habitual liar, a man who lies out of personal vindictiveness, a man who is berefit of moral sense, and here is what I base it on. Do you remember his telling you that he had joined the Communist Party in 1947, and by 1948 the thing was beginning to wear on him and he was thinking of going over and becoming an informer for the F. B. I. but it took him two years to finally reach that decision, and in that time he recruited people into the Communist Party by telling them that it was a great Party and had a great program; and he calmly sat there and told you that he deliberately misled his friends into joining the Communist Party, and then what did he do?

Having deliberately misled those friends he turned them over or their names over to the F. B. I. for money. Don't you tremble a little at the thought of that? Is this the kind of thing the prosecution calls defending democracy? Is this thing tolerable among decent men? Remember the stories—and I use the word "stories" in the plural advisedly—about his residence? October 13, 1951, under oath, his residence was 1491 McCoombs Road, Bronx. Three and a half months later, on January 31, 1952, residence under oath, 1308 Grand Avenue, Dayton, Ohio. And the document is in evidence. It is Defendant's Exhibit 24. You are certainly free to look at it when you get to the jury room. What he actually swore to, as I read that document, is that he would have lived in Dayton, Ohio, twelve months in May of 1952, which would have made this affidavit in Dayton flatly contradictory to the affidavit of McCoombs Road, Bronx. But Harvey Matusow is a pro. He had an explanation for that. He said, "Why, I thought that meant that I would have lived a year in Dayton, Ohio as of November, 1952," and, of course, if the explanation stands up that gets him out from under the false statement under oath to the Election Board in Dayton, Ohio. But eight months after he took the oath to the Daytona, Ohio Election Board, he registered in New York City again in Manhattan, and he voted there in November of 1952, and both times, according to the records, he gave his address as somewhere on tenth street in Manhattan. Now, that he can't get out of. That overlaps Dayton, whether you take the date as May or November, so how does the pro get out of that one? "Why", he says, "The record is wrong. These election clerks, these people who certify records, they make a mistake; I am right", says Harvey, "The officials are wrong. Their seal doesn't mean a thing." Reminds me a little bit of the little man who

said, "Everybody is out of step but me." But that is not all. In New York he said he had been a resident of Manhattan for twenty-six years. And does that overlap Dayton, Ohio and 1491 McCoombs Road, Bronx? Indeed it does. And how does he get out of that one? Again he says the official record is wrong. But now we have got him lying in Dayton, lying in Manhattan, or at least giving contradictory oaths, we can take our choice as to where he is lying. The shell game isn't over. He gets into a divorce scrap, runs out to Santa Fe, New Mexico, in September of 1953 and says, "I have been living here for more than a year." Apparently residence is whatever the needs of the moment call for with Mr. Matusow, and I say to you, gentlemen, and I think you agree with me, that a man who gives his oath to anything that the immediate needs call for is not a man we want to believe. Well, the shell game isn't over yet. I took him back to the fall of 1952 and reminded him that I had subpoenaed him as a witness in a case in New York City where he was supposedly under oath living in Manhattan and he admitted that at that time he demanded travel money from Dayton, Ohio before he would appear in pursuant to my subpoena. And why did he make that demand on that false claim? Because he wanted to inconvenience me, he said, and that is what I mean, gentlemen, about a man who will lie out of personal vindictiveness. Then I asked him why didn't he give the accurate street address at the time he was demanding travel from Dayton when he was under oath that he resided in New York and then the pro turned to his smear tactics and he mumbled something to you about how the Communist Party wouldn't promise him protection and he made a practice, he said, of not stating his street address because he didn't want to suffer the consequences, whatever they might be, of the Com-

munist Party's failure to promise him protection. He didn't give his street address for that reason, and then do you remember that I took him over—yes, Mr. Broaddus referred to them, these piles of records that we had here, that day this man, who would sit on this stand and tell you under oath that he had adopted a practice of not giving street addresses gave his street address five times under oath in the very year he said he had the policy not to do it. Well, one more thing on this gentleman, excuse me, on Mr. Matusow. You remember the plagiarism story. He said he had gone by the name of "Harvey Matt". He sells a newspaper article to the Santa Fe New Mexican under the byline "Harvey Matt". That is the kind of writer this fellow is. Every paragraph in that article but three—and you can see, gentlemen, the story that starts on one page and goes over to another one—every paragraph but three he lifted bodily out of a magazine called "Politcal Affairs." now, he says, "I didn't get paid for it." I said, "Well, didn't you get a check for it?" "Yes", he said, "a check was mailed to me." How did he know a check had been mailed to him if he didn't get it? How did he know? The pro slipped there, didn't he? Gentlemen, Defendant's Exhibit 27 in evidence is a check on the letterhead of "The New Mexican, Inc."., publishers of the "Santa Fe New Mexican"; Check No. 24, dated December 11, 1950, "Pay to the Order of Harvey Matt, twelve dollars." The article appears on Thursday, November 30, 1950. Well, says Harvey, "the indorsement on this check looks like mine but it isn't." Well, to assist you, gentlemen, and we didn't have to call on any handwriting expert, this exhibit, Defendant's Exhibit 28, has a whole series of exemplars of the signature of Harvey Matusow. Take a look at them when you get into the jury room and compare them with the Harvey Matt signature on here. I don't

think any of us have to be bank presidents or F. B. I. handwriting experts to satisfy ourselves that the same hand that wrote "Harvey Matt" on the check wrote "Harvey Matusow" on this sheet of paper (indicating). And so I say to you that the lust for money drove the pro into plagiarism for a measly twelve dollars. Of course, that was before the balmy days of McCarthyism and running around the country getting Republican super-patriots elected at ten thousand dollars a year. Yes, gentlemen, these are the kind of people whose word they want you to accept. Remember how many times Mr. Broaddus said "under oath" when he talked about his witnesses this morning? This is the kind of oath they want you to accept to put Mr. Jencks in jail. Fabrications? Completely exposed fabrications? People caught in their own records? People who would mislead their friends to turn them over to the F. B. I. for money. People who have no moral sense whatsoever. They want you to believe them against Mr. Jencks. They even go so far as to tell you that this kind of person who does this kind of thing for money represents an investment in democracy and a part of the Government. Is this the kind of investment in democracy that our Constitution contemplated? Are Ford and Matusow and Knott defenders of democracy who deserve to stand in the shadow of the man who has been decorated for cool courage in the face of great danger and high devotion to duty and who came back out of the war and gave seven years of his life to fighting for equality, economic security, and for peace among the miners of New Mexico. I trust, gentlemen, that you are not so gullible as to swallow that. I trust that you value your judgment and that you have such respect for yourself and such a sense of obligation of your duty that you will not give your belief to people like this, that you will not rest

your solemn judgment upon such stuff as the prosecution produced here in the form of these people called witnesses. I trust, gentlemen, that whatever the efforts that have been expended in this community over the recent months, that you will not permit prejudice or fear or pressures to so blunt your discernment that you will permit yourselves to discharge your solemn duty in reliance upon testimony of that kind. That, gentlemen, is my first point. There isn't anything in this record that you can rely on in reaching your judgment.

My second main point is that the prosecution hasn't proved that the affidavit was false, not even if you take each one of these witnesses at face value. Gentlemen, in addressing ourselves to this aspect of the case you will have to remember the old adage that they give to the beginning golfer, "Keep your eye on the ball", because the cry of Communism, and night meeting, and Moscow, and all this kind of thing, might very well take our eyes off the ball; and let us find out what that ball is so we can keep our eyes on it. The prosecution charges here that Jencks swore falsely that on April 28, 1950 he was not a member or affiliate of the Communist Party. Now, that is the issue, gentlemen. Was he a member or affiliate of the Communist Party on April 28, 1950? Not April, 1946. Not late '47 or early '48; not July or August, 1950; but on April 28, 1950. That is the ball. That is the issue. And the significant thing about this testimony, even if you accept it at face value, is how far removed it is from April 28, 1950. Most of the evidence relates to the period before April 28, 1950, and I will address myself to that first. Look at it. Currie; meeting in Denver involving the veterans and Barry; April, 1946, four years before the crucial date. Ford;

Albuquerque Progressive Party meeting in August, 1948, about a year and eight months before the crucial date; Santa Fe Anma meeting in February, '49, about a year and two months before the crucial date; Hot Springs, a Communist Party organization meeting, he says, April of '49, one year before the crucial date; Albuquerque, another so-called Communist Party organizational meeting in May, '49, eleven months before the crucial date; the "Nest of the Owl", supposedly an Anma meeting, July, 1949, nine months before the crucial date—and of all the evidence before April 28, 1950, that is the evidence that comes the closest, nine months before, and these are the meetings, incidentally, that were attended by all the same four people every time. Brooks; the conversation in the housing project in May, 1947—that is, he said it was May, 1947 before he knew that we were going out to get the record—May, 1947, two years and eleven months before April 28, 1950. The Knott meeting, late '46 or early '47, about three years and four months before the crucial date. Petersen; February, '48—that is, his second version of that gathering in the Hotel Utah—two years, two months before the crucial date; The Denver Rocky Mountain Conference of the Communist Party, he says, late '47 or early '48, two years and four months before; the Denver Conference, May or June of 1948, a year and ten months before the crucial date. And then the expert, Mr. Eckert; two meetings in August, 1947, two years and eight months before. Gentlemen, this evidence can't prove membership or affiliation in the Communist Party on April 28, 1950. It ranges from four years before April 28, 1950, to nine months before.

Let us take the case out of all this scare stuff, prejudice stuff about the Communist Party. Let us talk

about the Elks for a minute. Let us suppose that the Elks Club here offered a prize of a thousand dollars and a chance to kiss the Sun Queen to anybody who could prove he was a member of the Marfa Lodge of the Elks on April 28, 1950, and let us suppose somebody came in with a flock of documents to prove that he was a member of the Marfa Lodge in April of 1946; that he was a member of the Marfa Lodge in late '47 or early '48; and that he went to a closed meeting of the Marfa Elks Club nine months before April 28, 1950. Would any of you gentlemen give him the thousand dollars and a chance to kiss the Sun Queen? I think you would laugh him away. What is the prosecution going to do with this evidence? They are probably going to talk to you in terms that you can presume that a state of facts once shown to have existed continues to exist until the opposite is shown. They will tell you, "Well, we have shown you that he must have been a member all these other times way in the past. It is up to him now to show that he is not or that he wasn't on April 28, 1950." Gentlemen, as I understand the instructions that are going to be given to you, that is precisely what the law doesn't permit you to do. As I understand it, the Judge will instruct you that Mr. Jencks is presumed to be innocent and that it is up to the prosecution here to prove that Mr. Jencks is guilty; that Mr. Jencks doesn't have to prove that he is innocent. And the Court is going to tell you that this kind of evidence that doesn't touch the date or even get close to the crucial date is at best circumstantial evidence and that you, if you are to accept circumstantial evidence, must be satisfied that there is no reasonable inference from that circumstantial evidence except the inference of guilt. The Court will tell you that if you can draw two inferences from that evidence, one consistent with guilt and

one consistent with innocence, the law under your oath requires you to take the inference that is consistent with innocence. Would you just assume out of thin air that Jencks was a member of or affiliated with the Communist Party in April 28, 1950, because of this circumstantial stuff that doesn't come any closer than nine months before April 28, 1950?

Let us look at it another way. Or, before we look at it another way, I don't think you have any question about this problem. Don't close your mind to fact and reason, to the instructions of the Court, because somebody says "Communist." That is where your obligation comes in, gentlemen, to yourselves and to the Court. Let us look at it this way. We know from our common experience that membership in a voluntary organization rests upon constant agreement. Somebody has to agree to become a member of an organization. The organization has to agree that he become a member. We know that the relationship can be terminated at any time. When you join the Legion, or the Elks, or a church, or whatever you join, you don't do it for life. You may think you are going to do it for life because that is what you intend at the time, but you know you are not bound for life because you sign up and accept the responsibilities of membership. Note how easily the tie between certain of these witnesses and the Communist Party was broken. Currie just sort of dropped out. Petersen was apparently a more decisive person. Petersen made up his mind and cut the whole thing off. Knott drifted away. They just stopped associating with the Communist Party. They no longer regarded themselves as members. Let us look at it this way. If it is that easy to get out of a voluntary organization such as the Communist Party, or any other voluntary organization,

look at the situation over the years '49 and '50, how much heat there has been on the Communists in this country, how much pressure has been turned on them, how the law enforcement bodies are supposed to be cracking down on them; Senatorial and Congressional committees are investigating them; Communists are called every name under the sun; is it reasonable to suppose that when it is so easy to get out of the Communist Party that people are going to stand by it anyway? You have to draw your inferences in the light of the practical situation. How can you assume; just assume that a man is going to stand under all that stuff when it is so easy to get out from under. But look at this, this step of signing the affidavit on Jencks' part and the union's part was a very carefully deliberated step. The union opposed Taft-Hartley. It tried to get the legislation repealed after it was passed. It talked for about two years about the question of compliance with these filing requirements, and they kept raising the question in their discussions, as Petersen and the others told you, that signing these affidavits was dangerous because a bunch of people could come along like these and get you in trouble about a false oath. Are we going to assume that people who were aware of this problem who signed this affidavit after this kind of mature and lengthy deliberation were not going to do what was necessary to sign the others truthfully and properly, if only to save themselves from this kind of risk? Again, gentlemen, we have to draw our inferences from this circumstantial evidence in the light of the reality. When the prosecution asks you to assume that, because they have some evidence that Jencks was connected with the Party nine months before he signed the affidavit, that they ask you to assume from that that he was a member on the date he signed the affidavit, they are asking

you to substitute an asumption for a fact. They are asking you to assume that which common sense and ordinary experience tell you should not be assumed. Remember, the Court is going to tell you that Mr. Jencks is presumed to be innocent and that you can't assume that he would commit a crime. You have to have facts that will convince you beyond a reasonable doubt.

Well, then the prosecution goes on and says, "We have more than that. We have more than the before April 28, 1950 evidence. We have post-April 28, 1950 evidence. The conversations between Jencks and Matusow up there in the San Cristobal Valley Ranch in July or August of 1950" Now, they say, "we have proof before; we have proof after. Surely we filled the gap." Well, how big a gap is it? It is a gap of almost a year. Ford, who got the closest on this, said July or August, probably July, 1949, a meeting in Albuquerque. Matusow said a conversation in July or August, 1950. So there is a gap of a year, nine months of which is before the crucial date, eight or nine months of which is before the crucial date, three or four months of which is after the crucial date. Well, does it make any difference that they have proof of this kind before and after? Let us go back to our Elks Lodge illustration. Suppose the man who wants the thousand dollars and a chance to kiss the Sun Queen comes in and says, "I have got all this stuff in '46 to '49 about attending closed Elks meetings. Now, I got this man up in San Cristobal Valley Ranch, had a talk with me, and I admitted to him that I was a member of the Elks at that time." Would you still give him the thousand dollars and a chance to kiss the Sun Queen? I don't think so. He hasn't filled the gap. He just made a gap. And what reason is there to infer backwards anymore than it is to infer

forwards, under all of the circumstances that we have been discussing here? Let us remember one thing, gentlemen. The two questions that were put to Eckert on cross-examination were very carefully thought out. We asked him if the Communist Party in this period had a constitution. He said, yeah, they had something they called a constitution. We asked him if that constitution contained provisions that laid down the conditions of membership. He said it did. Have these prosecutors who want you to fill the gap with assumptions, have they offered you any proof as to what the conditions of membership in the Communist Party were? More important, have they offered you one scintilla of proof that Clinton E. Jencks fulfilled anyone of those conditions? If you are trying to prove membership or affiliation, the act of joining is pretty crucial. The act of joining is determined by compliance on the part of the individual with the organization's conditions, and they haven't even attempted to approach that problem. All they have given you is this circumstantial evidence and they ask you to act something like a spark in a spark plug, to jump from one end of the gap to the other, on the basis of an assumption unsupported by fact and repudiated by reason.

Now, what are the more likely assumptions? Because the Court is going to tell you that you can draw inferences consistent with innocence, you have to accept those. Couldn't a man just have dropped out in that period of time? What reason is there to assume that he didn't drop out? Could he have resigned? What reason is there to assume that he didn't? They try to rely on Mr. Ford, who said that Jencks wasn't disciplined by the Communist Party in that period. All right, so Mr. Jencks wasn't disciplined by the Communist Party in that

period, but does that prove that he didn't resign or that he just didn't drop out, the way some of these others did, or the way anybody could if they wanted to? Don't you see, gentlemen, that they are asking you to assume things that make no sense in order to get a conviction. They say that he wasn't replaced on the State Committee. Ford didn't say he wasn't replaced on the State Committee. As a matter of fact, all of Ford's testimony, as I recall it, is that he was on the State Committee in 1949. Now, what good is that; his evidence that Jencks wasn't replaced in 1950? There isn't even proof that Ford was a member in 1950, as I recall the evidence. Besides, can you believe Ford?

Now, just a few more minutes on some incidentals and I will be through. You know, sometimes you can tell the weakness of a case by the lengths to which the other side goes. Think of the taxpayers' money being spent to haul Mr. Thomason off a new job up in Oregon to come down here and identify a newspaper editorial which describes these affidavits as phony. Now, what they want you to infer from this is that Jencks said in this editorial, or was responsible for whatever was said in the editorial about phony afifdavit, and determine that his affidavit was phony. Again, this is really reaching for the straw, gentlemen. The union had been calling these affidavits "phony" for two years. Petersen told you the story. The union was opposed—

Mr. Williams:

Your Honor, I submit that there is not a word in the evidence about that, about what the union called them.

The Court:

The jury will pass upon the facts. All counsel will please stay within the record.

Mr. McTernan:

(Continuing) Petersen didn't say that the unions denounced these affidavits as union-busting techniques. Petersen didn't say that the union in its deliberations said that the affidavit or techniques were getting union leaders in trouble. He didn't use the word "phony" in quotes, no, but it adds up to the same thing, doesn't it? Now, the prosecution did a very interesting thing this morning. They did the thing that we warned the Court they were going to do all along in this case. They spent more time and more effort, and they devoted more evidence, to trying to prove a crime they didn't charge than the crime they did charge. You remember all the time Mr. Broaddus spent on Government's Exhibit 7, the October, 1949 affidavit, and he apparently wants you to convict Mr. Jencks because of that affidavit. We don't convict people in this country on charges not made, gentlemen. That isn't fair play. What is more important, we are dealing here with a presumption of innocence; whether the signature on the October '49 affidavit was true or false has nothing to do with whether the signature on the April '50 affidavit was true or false. One could have been true and the other false. They could have both been true. Aren't you again being asked to substitute arbitrary assumptions for reasonable inferences? Aren't you being asked to substitute arbitrary assumptions for obvious facts?

Then, they put a great deal of emphasis on Terrazas, and the story about fighting Communism. Well, you know, I was faced with a sort of conflict in interest dealing with Terrazas. He said he had been kicked out, in his words, in 1953. I wanted to show how faulty his recollection was by showing that he had been kicked out in '52. Of course, '52 was closer to the crucial date here than '53, but the point is, as he himself testified,

that Jencks wasn't leading the union in 1952; the very newspaper on which he had his recollection refreshed points out that Jencks wasn't the union president at that time. What kind of business is this, gentlemen? Has the prosecution gotten to the point where they pull anything out of the air and try to confuse you with it?

And now, my final point on this second big point. Mr. Broaddus said, and his associate again will talk to you about Jencks Communist activity, plotting and scheming, and night meetings, and so on, in Bayard and Silver City for all these years, and they will build him up as a big national menance, again trying to confuse you. If Jencks was engaged in all of these Communist activities, and recruiting people, and building up Communism, the way the prosecution says, over all these years, where are the witnesses? How is it that out of all the workers in Silver City and Bayard they have been able to produce one disaffected former member of the union, who himself was never a Communist, and who can't testify to Communist Party activity by Mr. Jencks? Isn't it strange that if the charge here, as the prosecution has painted it to you, is true, and with the resources of the great F. B. I., they haven't been able to produce one former member of the Communist Party from Bayard and Silver City to say, "Yes, he was there and attending meetings in and around April 28, 1950." Oh, gentlemen, that void in this case cries to you. That is the point in this thing that tells us they haven't got the goods, they haven't got the facts. And the facts that they claim just don't exist because if Jencks was the man they claim he is they would have the facts. The F. B. I. boasts about its capacity to find out the facts about the Communists and the inner workings of the Communist Party. This is the man who is supposed to have been inner working in the Communist Party for six years

and they haven't produced a witness. The absence of evidence cries for your verdict to dispose of this case into the rubbish heap that it belongs. They haven't produced here credible people. They haven't produced here people that you would be willing to trust your judgment to. If you and I were engaged in ordinary dealings in the course of our lives we wouldn't place reliance on people like that, not after the performance here. If you and I were trying to make an important decision that affected the life and the liberty of a human being who didn't have this cry of "Communist" chasing after his heels we wouldn't send him to jail on the basis of this kind of an assumption. I know we wouldn't. And I ask you, gentlemen, to continue to be American jurors in the sense that our Constitution and our laws call upon you to be. Honor the presumption of innocence, gentlemen. Follow the Court's instructions requiring that circumstantial evidence be consistent only with the hypothesis of guilt before you say "guilty." I don't think you will; not on the basis of the stuff they produced here. I hope that out of this verdict will come a new answer to this McCarthy-ite charge of Communism, and that is the answer that without the facts the charge should never be made.

* * * * * * * *

CLERK'S CERTIFICATE.

I, MAXEY HART, Clerk of the United States District Court in and for the Western District of Texas, do hereby certify that the foregoing on 1265 pages is a true and correct transcript of proceedings had and orders entered, as therein stated, in Criminal Action No. 54013, styled United States of America versus Clinton E. Jencks, as the same appear on file and of record in this office.

I further certify that said transcript of record includes only such pleadings and orders as are specified in the designations of the Plaintiff and Defendant filed herein with the exception of item No. 4 in Defendant's Designation "Defendant's Motion for Discovery and Inspection", there being no such Motion on file in this office.

Witness my official signature and the seal of said District Court at the City of El Paso, Texas, this the 10th day of September, 1954.

MAXEY HART,
Clerk,
By PAULINE G. SILVEUS,
(Pauline G. Silveus),
Deputy.

(Seal)

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IN THE

Supreme Court of the United States

October Terms, 1955

No. 596 23

CLINTON E. JENCKS,

Petitioner,

vs.

UNITED STATES OF AMERICA.

Petition of Clinton E. Jencks for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

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SUBJECT INDEX

PAGE

Opinions below 2

Jurisdiction 2

Questions presented 2

Statutes involved 4

Statement of the case 5

Motions challenging selection of the grand and petit juries 5

Evidence dealing with the issues of membership in and affiliation with the Communist Party 6

(a) The pre-affidavit period, April, 1946 to August, 1949 6

(b) The post-affidavit period 8

Evidence tending to prove a separate crime not charged 9

The trial court's instructions 9

Denial of access to informer reports to F.B.I. made by the witnesses Matusow and Ford contemporaneously with the events and transactions covered in their testimony 11

The motion for new trial based on the ground of newly discovered evidence 12

The evidence taken at the hearing on the motion for new trial 12

Denial of access to F.B.I. reports by Matusow at the hearing on the motion for new trial 13

Reasons for granting the writ 15

Argument 19

Point One. The court below erred in affirming the ruling of the trial court, which denied petitioner's request for an order requiring the Government to produce the F.B.I. reports to the court for its determination as to relevance and making available to petitioner such reports as were relevant 19

PAGE

(a) Petitioner's request, at the trial, with reference to Matusow's report to the F.B.I. which he was employed to make contemporaneously with the transactions covered in his direct testimony 19

(b) Petitioner's request, at the same hearing, with reference to the same reports 22

Point Two. The Court of Appeals erred in approving the District Court's charge to the jury as well as its refusal to charge on the issue of membership 26

Point Three. The court below erred in approving the District Court's charge to the jury on the issue of affiliation 34

Point Four. The Court of Appeals erred in approving the admission of evidence of a separate offense not charged in the indictment 37

Point Five. The Court of Appeals erred in approving the action of the District Court in the giving and refusal of instructions on the credibility of informers 40

Point Six. The Court of Appeals erroneously affirmed the action of the District Court in approving the systematic and purposeful exclusion of women from the jury system 43

(a) The exclusion of women violates the plain meaning and purpose of the governing statute 43

(b) The exclusion of women violates the Fifth and Sixth Amendments 47

Conclusion 48

Appendix. Statutes involved ..... App. p. 1

TABLE OF AUTHORITIES CITED

CASES	PAGE
American Communications Assn. v. Douds, 339 U. S. 382	3, 15, 17, 26, 29, 31, 32, 34, 35, 36
Ballard v. United States, 329 U. S. 187	45, 46, 47
Beaty v. United States, 203 F. 2d 652	23
Bollenbach v. United States, 326 U. S. 607	29, 38
Bowman Dairy Co. v. United States, 341 U. S. 214	22
Boyer v. United States, 132 F. 2d 12	38, 39
Bridges v. United States, 199 F. 2d 811, reversed 346 U. S. 209	28
Bridges v. Wixon, 326 U. S. 135	3, 17, 34, 35, 36
Colyer v. Skeffington, 265 Fed. 17	41
Connolly v. General Constr. Co., 269 U. S. 385	33
Cratty v. United States, 163 F. 2d 844	18, 42
DeJonge v. Oregon, 299 U. S. 353	33
Di Carlo v. United States, 6 F. 2d 364	16, 23
District of Columbia v. Clawans, 300 U. S. 617	41
Ellicott v. Pearl, 35 U. S. (10 Pet.) 412	16, 23
Fletcher v. United States, 158 F. 2d 321	42
Gelbin v. N. Y., N. H. & H. R.R. Co., 62 F. 2d 500	16, 23
Glasser v. United States, 315 U. S. 60	45, 46, 47
Goldman v. United States, 316 U. S. 129	22
Gordon v. United States, 178 F. 2d 896	24
Gordon v. United States, 344 U. S. 414	16, 19, 21, 23
Herndon v. Lowry, 301 U. S. 242	33, 36
Hupman v. United States, 219 F. 2d 243, cert. den. 349 U. S. 953	26, 30
Interstate Circuit v. United States, 306 U. S. 208	24
Kelly v. United States, 194 F. 2d 150	42
Kempe v. United States, 151 F. 2d 680	38

PAGE

Larrison v. United States, 24 F. 2d 82 24
Lovely v. United States, 169 F. 2d 386 38
Maggio v. Zietz, 333 U. S. 56 ..... 17, 32, 33
Martin v. United States, 17 F. 2d 973 24
Railton v. United States, 127 F. 2d 691 38
Smith v. Texas, 311 U. S. 128 45
Sopwith v. Sopwith, 4 Sw. & Tr. 243, 147 Eng. Rep. 1509 ..... 41, 42
Stromberg v. California, 283 U. S. 359 ..... 33, 36
Tedesco v. United States, 118 F. 2d 737 38
Thiel v. Southern Pacific, 328 U. S. 217 ..... 45, 47
Thornhill v. Alabama, 310 U. S. 88 36
Todorow v. United States, 173 F. 2d 439 38
United Brotherhood v. United States, 330 U. S. 395 30
United States v. Andolschek, 142 F. 2d 503 ..... 16, 21
United States v. Beekman, 155 F. 2d 580 ..... 16, 21
United States v. Cohen, 145 F. 2d 82 ..... 16, 20
United States v. Cohen Grocery Co., 255 U. S. 81 33
United States v. Fletcher, 158 F. 2d 321 18
United States v. Flynn, 130 Fed. Supp. 412 ..... 13, 25
United States v. Johnson, 327 U. S. 106 23
United States v. Krulewitch, 145 F. 2d 76 ..... 16, 20
United States v. Modern Reed and Rattan Co., 159 F. 2d 656 38
United States v. Mulligan, 59 F. 2d 200 40
United States v. Roemig, 52 Fed. Supp. 857 47
United States v. Rossi, 182 F. 2d 292 39
United States v. Schneiderman, 106 Fed. Supp. 731 21
United States v. Smith, 262 Fed. 191 40
Weiss v. United States, 122 F. 2d 675 38
Winters v. New York, 333 U. S. 507 36
Wright v. United States, 172 F. 2d 310 40

DICTIONARIES — PAGE

Funk & Wagnalls Dictionary (1953) 39
Webster's Dictionary 34
Webster's Dictionary (1953) 39

MISCELLANEOUS

Congressional Service, 80th Cong., 2d Sess., pp. 1676, 1697, 1880 45
Report of Judicial Conference of Senior Circuit Judges, 1943, p. 23 46
Report of Judicial Conference of Senior Circuit Judges, Oct., 1946 46

STATUTES

Taft-Hartley Law, Sec. 9(h) 29, 34, 36
Texas Civil Statutes, Art. 2133 ..... 4, 6, 44
Texas Civil Statutes, Art. 2134 ..... 4, 6, 44
United States Code, Title 18, Sec. 1001 ..... 4, 5, 30, 39
United States Code, Title 28, Sec. 1254(1) 2
United States Code, Title 28, Sec. 1861 ..... 4, 44, 45, 47
United States Code, Title 28, Sec. 1864(4) 4, 46
United States Code, Title 29, Sec. 159(h) 4, 5, 17, 29, 39
United States Code Annotated (1946 Ed.), Title 28, Sec. 411 .. 44
United States Constitution, Art. I, Sec. 9, Clause 3 4
United States Constitution, First Amendment 3, 4, 15, 17, 18, 36
United States Constitution, Fifth Amendment 4, 15
United States Constitution, Sixth Amendment 4, 46, 47

TEXTBOOKS

42 Michigan Law Review, pp. 831, 853, Blume, Jury Selection Analyzed 46
3 Wigmore, Evidence (3d Ed.), Sec. 738, p. 76 ..... 17, 20
3 Wigmore, Evidence (3d Ed.), Sec. 1042, p. 733 ..... 17, 20
4 Wigmore, Evidence (3d Ed.), Sec. 1056 25
4 Wigmore, Evidence (3d Ed.), Secs. 1128-1129, pp. 203-207 23
7 Wigmore, Evidence (3d Ed.), Sec. 2094 25

IN THE

Supreme Court of the United States

October Terms, 1955

No. .....

CLINTON E. JENCKS,

Petitioner,

vs.

UNITED STATES OF AMERICA.

Petition of Clinton E. Jencks for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

To the Honorable Earl Warren, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Clinton E. Jencks respectfully petitions that a writ of certiorari issue to review two judgments of the United States Court of Appeals for the Fifth Circuit. In one judgment the Court of Appeals [R. 1220][1] affirmed the judgment of conviction of the United States District Court for the Western District of Texas, El. Paso Division. In the other the Court of Appeals [H. 855][1] af-

[1]Each proceeding had its own record below. References to the trial record will be in the form R. ....., and to the motion for new trial record thus, H. ..... The trial record bears the Court of Appeals' No. 15157; that of the motion for a new trial No. 15557.

firmed the order of the same District Court denying petitioner's motion for new trial based on the ground of newly discovered evidence.

Opinions Below.

The opinions of the Court of Appeals are not yet reported. They are set out in the Transcripts of Record prepared in that Court. [R. 1192; H. 836.]

Jurisdiction.

The judgments of the Court of Appeals were made and entered October 26, 1955. Petitioner timely filed his petitions for rehearing on November 15, 1955. [R. 1221; H. 856.] The Court of Appeals made and entered its orders denying the same on December 1, 1955. [R. 1239; H. 871.] The jurisdiction of this Court is invoked under 28 U. S. C., section 1254(1).

Questions Presented.

1. Whether on the cross-examination of a key government witness, who had been employed by the F.B.I. as an informer, the trial court on application should require to be produced to it the witness' contemporaneous reports to the F.B.I. concerning the transactions covered in his direct testimony and make available to the accused so much of those reports as are relevant for impeachment of the witness.

2. Whether, when a witness described as above fully recants his trial testimony and testifies on a motion for new trial and his recantation is attacked on cross-examination as a recent fabrication corruptly induced, the trial court should on application require to be produced to it the same reports and make available to the accused so

much of those reports as are relevant to the truth of the recantation and the rehabilitation of the witness.

3. Whether under the circumstances described in question two the trial court should on application require to be produced to it a statement dictated by the witness to an F.B.I. agent before the trial to the effect that he did not believe his grand jury testimony herein to be honest and make available to the defendant so much of that statement as is relevant to the rehabilitation of the witness.

4. Whether the trial court's instruction on the issue of membership,

(a) failed to provide the jury with any legal yardstick against which to appraise the evidence;

(b) permitted the jury to make a finding of membership in the Communist Party as of April 28, 1950, solely upon evidence of membership long in advance of that date, contrary to the decision of this Court in *American Communications Assn. v. Douds*, 339 U. S. 382, and failed to advise the jury of limitations upon criminal liability under the statute involved;

(c) applied the statute in such a way that it afforded no ascertainable standard of guilt and abridged First Amendment liberties.

5. Whether the trial court's instructions on the issue of affiliation,

(a) defined affiliation in a manner contrary to that decided by this Court in *Bridges v. Wixon*, 326 U. S. 135;

(b) provided the jury with a wholly confusing and misleading charge and failed to furnish it a useable legal yardstick in that the instruction both equated membership and affiliation and differentiated the two;

(c) applied the statute in such a way that it afforded no ascertainable standard of guilt and abridged First Amendment liberties.

6. Whether in a prosecution for false statement under 18 U. S. C., section 1001 and 29 U. S. C., section 159(h) evidence of a prior affidavit to the same effect, but not alleged in the indictment, is admissible, and if so, whether it is error to fail to instruct the jury as to the probative effect of such evidence.

7. Whether the trial court at the request of the accused should instruct the jury that the testimony of witnesses who had been employed by the F.B.I. as informers posing as members of the Communist Party, and in that capacity had participated in the transactions with the accused covered in their testimony, should be approached with caution and weighed with great care.

8. Whether under 28 U. S. C., section 1861, subdivision 4, it is permissible systematically to exclude women from the jury system for the reason that they are declared incompetent by state law.

Statutes Involved.

The pertinent provisions of the statutes involved: 29 U. S. C., section 159(h); 18 U. S. C., section 1001; 28 U. S. C., section 1861; Texas Civil Statutes, Articles 2133, 2134; and the constitutional provisions involved: First, Fifth and Sixth Amendments, Article I, section 9, clause 3, of the Constitution of the United States are set forth in the Appendix.

Statement of the Case.

Petitioner was charged and found guilty in two counts of filing with the National Labor Relations Board a false affidavit of non-Communist union officer contrary to 18 U. S. C., section 1001 and 29 U. S. C., section 159(h). He was sentenced to a term of five years imprisonment on each count, the sentences to run concurrently.

The indictment [R. 1] was filed April 20, 1953. It alleged that on April 28, 1950, the defendant made and filed the affidavit and that he knew it contained a false denial of membership in the Communist Party (count one) and a false denial of affiliation with that Party (count two). The affidavit [G-1, R. 978-979] was purportedly executed and filed in connection with an effort by Local 890, International Union of Mine, Mill & Smelter Workers[2] to comply with the requirements of 29 U. S. C., section 159(h).

Motions Challenging Selection of the Grand and Petit Juries.

By appropriate motions [R. 3-11, 45-51] petitioner asserted the invalidity of the grand jury which returned the indictment and the trial jury which returned the verdict. In each instance the grounds were the systematic and intentional exclusion of women from the jury system. The supporting affidavits of E. B. Elfers, Esq. [R. 9, 10, 49-51] and the testimony of the jury commissioner[3] are that only the names of men have been placed in the box,

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[2]The International Union is herein called Mine-Mill.

[3]To save expense in the appeal brought to the court below, petitioner did not cause that testimony to be transcribed. No issue was raised in the court below with this statement as to the effect of the testimony. If any issue is raised to this Court, petitioner will ask leave to supplement the record with a full transcript of it.

that the names of women have been purposely excluded solely because of their sex, and this is deemed required under the applicable provisions of federal and state law. (28 U. S. C. A., Sec. 1861; Texas Civil Stat., Art. 2133.) There is no issue of fact in these respects.

Evidence Dealing With the Issues of Membership in and Affiliation With the Communist Party.

(a) THE PRE-AFFIDAVIT PERIOD, APRIL, 1946 TO AUGUST, 1949.

Seven witnesses testified to events occurring in this period, of whom five described "closed Communist Party meetings." The witness Currie testified to such a meeting, composed of veterans, at the home of the Colorado state chairman of the Party. This was in April, 1946, four years before the affidavit. Jencks said that veterans faced many problems which could be met only if Communist Party members raised them before the membership of veterans' organizations and that they should participate in all such groups. [R. 210-219.]

The witness Ford, who was an informer employed by the F.B.I. to pose as a Party member, testified to five such "closed" meetings ranging over a twelve-month period ending nine months before the affidavit was signed. The first was called by a local officer of the Communist Party and was part of the 1946 election campaign of the Progressive Party. Jencks was a candidate of that party for Congress and he said he would do all in his power to further the election campaign. [R. 257-259.]. The second was called by the same officer and resulted in the selection of delegates to attend a meeting of a Mexican-American Association. The third was called by the same officer to

complete the organization of the Communist Party in New Mexico. Jencks was placed on the State Board and given responsibility for labor. [R. 263-266.] The fourth was a meeting of the State Board attended by petitioner who reported on his work among labor, including recruiting. [R. 267-269.] The last meeting was called by the same officer in preparation for a meeting of the Mexican-American Association. He asked those present to support the meeting but remain in the background. [R. 269-270.] During the period "starting in 1949 and up to September in 1950," while Ford was a security officer of the Party, Jencks was not "replaced in his position on the State Board" [R. 300], and no disciplinary action was taken against him in his presence. [R. 267, 277, 282.]

The witness Knott testified to such a "closed" meeting in late 1946, some three and one-half years before the affidavit. Present were three representatives of Mine-Mill, including Jencks and the witness, and the Communist Party organizer for the area. The discussion covered internal union matters such as getting out a monthly publication to the membership and consolidating the several local unions into one, as well as developing a "solid Communist Party group" and payment of dues to the Communist Party. [R. 412-418.]

Peterson testified to two such meetings. They were composed exclusively of union personnel, including Peterson, said to be also members of the Communist Party. The first was held approximately two and one-half years before the affidavit and at the time of a Mine-Mill conference. Discussed were problems of disaffection and the conflict of "left" and "right" within the union as well as opposition to the then pending Taft-Hartley bill. [R. 494-499.] The second of these meetings was held nearly

two years before the oath. The discussion covered secession movements in the Union, the Wallace campaign for the Progressive Party and the Union's position not to file non-communist affidavits. [R. 507-510.] Peterson said he attended a Rocky Mountain Convention of the Communist Party with Jencks, more than two years before the affidavit. He and Jencks were put on a committee to combat discrimination against Mexican-American people, and they heard a speech decrying governmental encroachments on civil liberties and asking Party members to resist them. [R. 500-506.]

The witness Eckert was a former officer of Mine-Mill. He said he attended two "closed" Communist meetings with Jencks which discussed the candidacies of two union members for union office. [R. 905-914.] These meetings were held over two and one-half years before the affidavit was signed.

One Brooks testified to a front porch conversation in May, 1947, nearly three years before the affidavit. When Brooks commented that Jencks' remarks sounded like "Communist beliefs," petitioner is said to have retorted that "he was a Communist and proud of it." [R. 386-388.] Finally, the printer for the local union newspaper identified an editorial, published in October, 1949, and signed by Jencks [G. 24, R. 970-974] containing this sentence, "Now that our Union has signed the phony affidavits we can defend ourselves on a ballot in case of raids." [R. 973.]

(b) The Post-Affidavit Period.

Terrazas testified that during the years 1950, 1951 and 1952, petitioner had urged the union membership to buy the Daily People's World because it brought truth

to the people. [R. 932.] According to Matusow this was a "West Coast Communist Party newspaper." [R. 593.]

Matusow testified to four incidents involving petitioner. These occurred in late July and early August 1950, approximately three months after the affidavit, at a vacation ranch in New Mexico. In three of them Matusow attributed to petitioner admissions of membership in the Communist Party and participation in its affairs. In one of these Matusow said that Jencks described preparations by representatives of Mine-Mill to cut off copper production for the Korean hostilities. In the fourth incident he testified that petitioner urged the reading of the Daily People's World, favored a disarmament plan of the Soviet Union and expressed opposition to the Korean fighting, terming the United States an aggressor. [R. 588-589, 590-592, 592-596, 597-598.]

Evidence Tending to Prove a Separate Crime Not Charged.

In addition to the 1950 affidavit the government offered an affidavit dated October 15, 1949 [G. 7, R. 92, 989], along with other documents purportedly connected with a 1949 "filing" by Local 890. [G. 8, G. 9, G. 10; R. 989-995.] The offers were objected to on the ground that they tended to prove a different offense, since barred by the statute of limitations, and were highly prejudicial. [R. 114.] They were finally received subject to this objection. [R. 976.]

The Trial Court's Instructions.

On the issue of membership the District Judge charged the jury that they "may consider" not only attendance at Communist Party meetings and holding office therein, but also "conduct consistent only with membership in the

Communist Party and all other evidence, either direct or circumstantial, which bears or may bear upon the question of whether or not he was a member . . .". [R. 1061.] The court refused petitioner's requested charges to the effect that the act of joining the Party is the crucial element of the proof of membership and that membership is a consensual relation requiring proof of acceptance of the conditions therefor laid down by the Party. [R. 1120-1121.]

The District Court's charge on the issue of affiliation included a dictionary definition of the verb "affiliate" which embraced the concept of association or connection and the attachment of membership. Additionally it said that affiliation "means something less than membership but more than sympathy." It permitted the jury to find affiliation from "all the evidence." [R. 1063.] The court refused petitioner's request to charge that affiliation imported a status of mutual recognition and dependability upon which the individual and the organization may rely and that affiliation required more than a showing of cooperation or repeated acts of support. [R. 1122-1123.]

On the credibility of hired informers, the District Judge charged the jury that it "may consider" the circumstances of their receipt of "money for services and expenses in furnishing information to the Federal Bureau of Investigation." [R. 1064.] It rejected petitioner's proffered charge that the testimony of such persons should be approached "with caution" and weighed "with great care." [R. 1117-1118.]

The trial court gave no instruction at all on the probative use, if any, of the 1949 affidavit.

Denial of Access to Informer Reports to F.B.I. Made by the Witnesses Matusow and Ford Contemporaneously With the Events and Transactions Covered in Their Testimony.

At the time of the incidents covered in his direct testimony, Matusow purported to be a member of the Communist Party while he was in fact an informer employed by the F.B.I. His instructions were to report at least once a week and to include everything relating to Party activities without selection or omission. [R. 651-653, 657-658.]

Petitioner moved that the trial judge require the government to produce these reports to the court for its determination as to the portions relevant for impeachment, only the latter to be provided petitioner. [R. 658-659.] The motion was denied. [R. 667.]

At the time of the occurrences related in his testimony, Ford also was employed by the F.B.I. as an informer. His recollection was that he "reported on every meeting" [R. 347], and as soon thereafter as he could, "while things were still fresh in [his] memory." [R. 309-310.] Petitioner moved the trial court for production and inspection of Ford's reports on the same grounds and under the same conditions urged in connection with the Matusow reports. [R. 897-898.] This was denied. [R. 898.]

The court below characterized petitioner's motions as requests to be "permitted to explore the government's file with the hope of turning up inconsistent statements by government witnesses Ford and Matusow." [R. 1217.]

The Motion for New Trial Based on the Ground of Newly Discovered Evidence.

While petitioner's appeal to the court below was pending he duly and timely filed, on January 28, 1955, with the trial court, his motion for new trial based on the ground of newly discovered evidence. Petitioner's motion [H. 2-6] was supported by an affidavit of Harvey Matusow, the government's principal witness at the trial, dated January 20, 1955 [H. 7-12], which recanted his trial testimony. After a hearing in which evidence was taken, the motion was denied on March 12, 1955 [H. 825-826], apparently for the reason that the trial judge disbelieved the recantation. [H. 819, 820.]

The Evidence Taken at the Hearing on the Motion for New Trial.

Matusow testified at length at the hearing and recanted fully and in detail his testimony given at the trial. The hearing was given over largely to the government's massive attack upon Matusow's credibility. Its thesis was that he had told the truth upon the trial and had lied in recanting as a result of corrupt inducement moving from petitioner and his union. The government's claim rests largely on the following:

1. Before testifying at the trial Matusow had on four occasions testified to substantially the same facts as those given by him at the trial.

2. In a transcription of Matusow's tape recording, prepared in connection with the writing of his book[4] [H. 689-692, 696-697] and an excerpt from a preliminary

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[4]"False Witness", by Harvey Matusow, Cameron and Kahn, publishers, New York, 1955.

draft of the book [H. 681, 684], Matusow said as late as December, 1954, and January, 1955, that he knew Jencks was a Communist.

3. Following Matusow's admissions to Bishop Oxnam and Messrs. Brown and Norvell that he had given false testimony,[5] he on at least four occasions endorsed his original testimony or denied that he had ever lied.

4. Matusow was impecunious before being contacted by those who ultimately published his book. He was given money and thereafter wrote his book and made his recantation. [H. 284-287, 291, 294, 300, 317, 321-326, 322, 327, 730-737, 546-547.]

Denial of Access to F.B.I. Reports by Matusow at the Hearing on the Motion for New Trial.

On his redirect examination, and after the foregoing attack upon his credibility, Matusow testified that none of his contemporaneous reports to the F.B.I. made concern-

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[5]After these men had made public Matusow's admissions of having "borne false testimony and desires to publish a book on the 'World of McCarthy'" for which he needed a publisher's advance of $1500, petitioner's counsel decided to get a publisher to assist Matusow. (See Judge Dimock in *United States v. Flynn* (D. C., N. Y.), 130 Fed. Supp. 412, 416.) Contact with a publishing house in New York was made and money paid it for expenses by way of advance purchase of copies of the book if one eventuated. Matusow undertook to write the book for an advance against royalties of $1500. He was contacted by the publishers at Taos, New Mexico, while engaged on a bicycle trip from Dallas. At the time he was low in funds. Mine-Mill paid the publisher a total of $3250 ($2000 of this after completion of the manuscript) by way of advance purchases. It made plans for extensive distribution of the book, for it sought vindication of itself as well as petitioner against the Matusow charges of plotting to cut off copper production for Korea. Matusow knew nothing of the Mine-Mill financial arrangements until after he had given his affidavit of recantation. [H. 631-638, 774-792, 788-789, 802, 803, 809-811, 233-234, 330, 378-400, 453.]

ing his observations at the vacation ranch in July and August, 1950, indicated that he "had any conversations that established that Jencks was a Communist." [H. 662.] He said they would show that he "had no way of knowing who were or were not Communists, including Mr. Jencks" and that he "never at any time identified Mr. Jencks as a member of the Communist Party in the reports [he] turned in to the F.B.I. in that period when [he] was reporting." [H. 661.] Petitioner asked that the government be required to produce these reports to the court for its examination to determine their relevance to the issue of fabrication in the recantation, only the relevant portions to be inspected by petitioner. [H. 663.] The request was denied. [H. 664.]

Early in his cross-examination Matusow testified that in late August, 1953 (intermediate his testimony to the Grand Jury and his testimony at the trial of petitioner) he had spoken to an agent of the F.B.I. at Santa Fe, New Mexico, stating that he did not want to testify in the Jencks trial, that "I didn't feel my testimony was honest . . . I didn't want ever to testify and especially in the Jencks trial that was coming up." The agent wrote down what Matusow said and showed it to Matusow for his approval. [H. 67-69.] The court was requested to order that the F.B.I. reports embodying what Matusow said be produced to the court for its inspection to determine its relevance on the issue of the truth of Matusow's testimony at the hearing, the relevant portions to be made available to petitioner. The request was denied. [H. 107, 147.]

Reasons for Granting the Writ.

Presented are questions important to the administration of justice in the application of section 9(h). While this Court has approved the non-Communist affidavit requirement on its face (*American Communications Assn. v. Douds*, 339 U. S. 382), it has yet to review a case showing the practical operation of the statute. Frankly aimed at the elimination of trade union officers identified only by association and ideology, the statute as applied here has been given an ambit of limitless scope wherein membership has no outer limits and affiliation embraces cooperation for constitutionally protected objects. The resulting problems of First and Fifth Amendment vagueness portend a political censorship pervading the entire leadership of the trade union movement.

A necessary concomitant of this vagueness was the failure of the trial court to provide the jury with workable legal yardsticks for appraising the evidence. The issues of membership and affiliation were left at large; their determination at the hands of the jury rested upon the latter's personal notions or predilections, not upon their evaluation of fact guided by legal principles. The conviction does not rest upon a verdict arrived at through a judicial process as we know it.

Also presented is the availability of tested methods of ascertaining truth in respect of the testimony of informers in the pay of the Department of Justice. The evidence of such persons was key to this conviction. But neither when the witness testified at the trial and petitioner asserted he lied, nor later when he recanted and the government claimed he lied, was petitioner able to gain access to his contemporaneous informer reports respecting the

transactions covered in his trial testimony. The shadow of perjury by an inherently untrustworthy witness (an informer for pay) has never been dissipated or given substance by resort to the best evidence of the facts in question.

The Court of Appeals in affirming the denial by the District Court at the trial, of petitioner's access to such portions of Matusow's contemporaneous F.B.I. reports as that court had determined, in camera, to be relevant for purposes of impeachment, has rendered a decision in conflict with the decisions of the Court of Appeals for the Second Circuit on the same matter. *United States v. Krulewitch* (C. A. 2), 145 F. 2d 76; *United States v. Cohen* (C. A. 2), 145 F. 2d 82. See also *United States v. Beekman* (C. A. 2), 155 F. 2d 580; *United States v. Andolschek* (C. A. 2), 142 F. 2d 503. The decision of the court below also misapplied the decision of this Court in *Gordon v. United States,* 344 U. S. 414.

The affirmance of the District Court's denial, at the hearing, of petitioner's access to those portions of the same reports as that court had similarly determined to be relevant to the issues there, determined the admissibility and evidentiary value of the reports in a way in conflict with the applicable decisions of this Court and the Court of Appeals for the Second Circuit. *Ellicott v. Pearl,* 35 U. S. (10 Pet.) 412, 439; *Gelbin v. N. Y., N. H. & H. R. R. Co.* (C. A. 2), 62 F. 2d 500; *Di Carlo v. United States* (C. A. 2), 6 F. 2d 364.

In both respects mentioned above the Court of Appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by the District Court, as to call for an exercise of

this Court's power of supervision. The reports in question were the best evidence of the matters recorded in them (3 Wigmore, *Evidence,* 3d ed., p. 76, Sec. 738), and they would have had high evidential value in the event they either expressly negatived the trial testimony or failed to mention the incidents related in that testimony. (Wigmore, *op. cit.,* p. 733, Sec. 1042.)

The Court of Appeals in approving the instructions of the District Court on the issue of membership has, upon the evidence in this record, applied the statute (29 U. S. C. A., Sec. 159(h)) in a way in conflict with the decision of this Court in *American Communications Assn. v. Douds,* 339 U. S. 382, and has applied the presumption of continuance in a way in conflict with the decision of this Court in *Maggio v. Zietz,* 333 U. S. 56. Additionally, the approval of that instruction so far sanctioned a departure from the accepted and usual course of judicial proceedings by the District Court as to call for an exercise of this Court's power of supervision for the reason that the instruction equipped the jury with no legal criterion for its appraisal of the evidence and has rendered the statute so vague, indefinite and uncertain as to afford no ascertainable standard of guilt and to trespass upon First Amendment liberties.

The decision of the Court of Appeals in approving the instructions of the District Court on the issue of affiliation has decided a federal question in conflict with the decision of this Court in *Bridges v. Wixon,* 326 U. S. 135, and has so far sanctioned a departure from the accepted and usual course of judicial proceedings by the District Court as to call for an exercise of this Court's power of supervision for the reason that the instruction

gave the jury no legal criterion for its appraisal of the evidence and has rendered the statute so vague, indefinite and uncertain as to afford no ascertainable standard of guilt and to abridge First Amendment liberties.

The holding of the Court of Appeals sustaining the ruling of the District Court in receiving evidence of a prior but separate offense not charged and in failing to instruct the jury as to the limited probative effect of that evidence so far departed from the accepted and usual course of judicial proceedings, and so far sanctioned such a departure, as to call for an exercise of this Court's power of supervision in that the jury was confused by the evidence and petitioner was convicted of a charge not made.

The decision of the Court of Appeals affirming the refusal of the trial court to give petitioner's requested charge on the credibility of hired informers is in conflict with the decisions of the Court of Appeals for the District of Columbia on the same subject. *United States v. Fletcher* (C. A. D. C.), 158 F. 2d 321, 322; *Cratty v. United States* (C. A. D. C.), 163 F. 2d 844, 850. It presents a question of growing importance to the integrity of the judicial process because of the practice of using informers in criminal prosecutions involving political association and belief.

The Court of Appeals in affirming the judgment of the District Court has necessarily but not explicitly decided an important question of federal law which has not been, but should be, settled by this Court in that the District Court approved the jury selection system of that District which systematically and deliberately excluded women solely on account of their sex.

ARGUMENT.

POINT ONE.

The Court Below Erred in Affirming the Ruling of the Trial Court, Which Denied Petitioner's Request for an Order Requiring the Government to Produce the F.B.I. Reports to the Court for Its Determination as to Relevance and Making Available to Petitioner Such Reports as Were Relevant.

(a) Petitioner's Request, at the Trial, With Reference to Matusow's Reports to the F.B.I. Which He Was Employed to Make Contemporaneously With the Transactions Covered in His Direct Testimony.

The facts summarized *ante*, page 11, indicate ample basis in this record for the conclusion that such reports were in existence and would have reflected these transactions had they occurred. Petitioner sought at the trial no blunderbuss foray into F.B.I. files. His motion was so framed [R. 658-659] that it would have obtained only those portions of the described reports which (a) pertained to the incidents related in the direct, and (b) contradicted the direct.

This Court has observed that where "the Government's case may stand or fall on the jury's belief or disbelief of one witness, his credibility is subject to close scrutiny." *Gordon v. United States*, 344 U. S. 414, 417. That policy applies with especial force to the case at hand. Even the prosecutor admitted that Matusow's testimony was "absolutely essential." [H. 13.]. The government's burden was to convince the jury that petitioner had knowingly falsified his denial of connection[6] with the Communist Party

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[6]We use this term as a shorthand for "membership in and affiliation with."

as of April 28, 1950. Only Matusow's testimony speaks of the period after that date.[7] All the rest speaks of a period nine months to four years before that date. The court below found the evidence sufficient only upon "the Government's total proof."

Given these circumstances all information that would assist a discriminating appraisal of Matusow's trustworthiness was an undeniable prerequisite to the fairness of the trial. The trial court's action resulted in withholding facts that might have had inestimable value in impeaching this already suspect witness.[8] The Court of Appeals in the Second Circuit holds that under these circumstances the government must produce the reports. Where it is not possible for the accused to show the contradiction before the document is produced, it must be produced to the court for it to determine whether it is relevant for impeachment purposes. If it is so relevant the accused must be allowed to inspect it. *United States v. Krulewitch* (C. A. 2), 145 F. 2d 76, 79; *United States v. Cohen*

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[7]His credibility had been sharply attacked at the trial. On two prior occasions of testimony concerning Jencks, Matusow had failed to mention three of the four incidents related at the trial. [R. 657-658, 678-679.] A quondam hired informer and renegade Communist, he had turned his revelations into money as an expert on anti-Communism and campaigner for Senator McCarthy. [R. 681-689.] His repeated lies about his residence had been used to obtain improper voting privileges [R. 623-629] or jurisdiction for a divorce action [R. 637-638] or to obtain travel money he was not entitled to. [R. 642-643.]

[8]As contemporaneous records of the matters they recite, prepared under directions and in accordance with a practice to be all-inclusive, the reports were the best evidence of those matters—superior to the unaided recollection of the witness given three and one-half years later. 3 Wigmore, *Evidence*, 3d ed., p. 76, Sec. 738. Even their failure to report the incidents covered in the direct would have amounted to an "assertion of their non-existence." Wigmore, *op. cit.*, p. 733, Sec. 1042.

(C. A. 2), 145 F. 2d 82, 92.[9] Indeed under the holdings of that court the accused is entitled to inspect any documents in possession of the government which have relevance to the issues being tried, and it is for the trial court to examine the documents and give the accused access to those which are relevant. *United States v. Beekman* (C. A. 2), 155 F. 2d 580, 584; *United States v. Andolschek* (C. A. 2), 142 F. 2d 503, 506.

In sustaining the trial judge the court below held, under *Gordon v. United States,* 344 U. S. 414, that petitioner was not entitled to the reports unless he first showed they were inconsistent with the direct testimony. The Court of Appeals misconceived the holding in the *Gordon* case. There the accused developed on cross-examination that the government's principal witness had given several statements about the criminal transactions in which he did not implicate the defendant. Upon this showing the defendant requested production of the statements. It would appear that the accused's motion was for direct access to the documents. (344 U. S. at 417-418.) This Court held that upon the foundation there laid such production was necessary. Here, on the other hand, there was no showing of contradiction and the accused therefore made a different request. The trial court in this case was asked to require the production of the documents to it so that it could inspect them and give petitioner access only if the contradiction appeared. The *Gordon* opinion

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[9]In a closely similar case it was held, in a carefully reasoned opinion, that, upon a showing that the informer reports to the F.B.I. had been made, the government must deliver them to the court for its inspection and that the court would make available to the accused those reports having value as impeachment. *United States v. Schneiderman* (D.C. Calif.), 106 Fed. Supp. 731.

does not reach this situation. It was not presented there, and this Court explicitly confined its holding to the facts there presented. (344 U. S. at 418.)[10]

(b) Petitioner's Request, at the Hearing, With Reference to the Same Reports.

Nearly every phase of the attack upon Matusow's credibility in recanting was opened during his cross-examination. On redirect, Matusow testified in effect that his contemporaneous reports supported his recantation and belied his trial testimony. From this it would appear that the petitioner had gone as far as possible to lay a foundation that (a) the reports existed, (b) they were consistent with the recantation and contradictory of the trial testimony, (c) they were contemporaneous with the events they record, and (d) they were made long prior to the facts relied on by the government to show corruption or other motive for fabrication.

Petitioner immediately moved that the government be required to produce the reports to the judge for his inspection to determine their relevance. [H. 663, 147.] The judge denied the motion [H. 663], stating that the government is not required "to produce anything from the secret files of the F.B.I." [H. 664.]

Upon the foundation laid, the reports had obvious relevance. Under a decision of this Court they were admissible to rehabilitate Matusow for the foundation showed them to be consistent with his direct testimony and given prior

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[10]The Court of Appeals also relied on *Bowman Dairy Co. v. United States*, 341 U. S. 214; and *Goldman v. United States*, 316 U. S. 129. Those cases deal with pre-trial production of documents, not extra-judicial statements of a witness called by the government. They appear to have no application here.

to the facts showing fabrication or motive to do so. *Ellicott v. Pearl*, 35 U. S. (10 Pet.) 412, 439. This rule of admissibility has found general acceptance. 4 Wigmore, *Evidence*, 3d ed., pp. 203-207, Secs. 1128, 1129. Under the decisions of the Court of Appeals for the Second Circuit the exclusion of such a statement in a civil case is reversible error. *Gelbin v. N. Y., N. H. & H. R. R. Co.* (C. A. 2), 62 F. 2d 500, 502. This kind of evidence is the more valuable when, as here, the rehabilitating declaration is provided by the witness himself, thus permitting cross-examination of the declarant. *Di Carlo v. United States* (C. A. 2), 6 F. 2d 364, 366; *Beaty v. United States* (C. A. 4), 203 F. 2d 652, 656.

The foundation laid having so plainly indicated the relevance and the admissibility of the reports, the least that was called for was that, under the decisions of the Second Circuit cited in subdivision (a), *ante*, the reports be produced to the judge so that he could verify their relevance and turn them over to petitioner. Indeed, upon this Court's holding in *Gordon v. United States*, the reports should have been made available directly to petitioner. In any event, the affirmance by the Court of Appeals of the judge's refusal to order the reports produced under any conditions calls for review by this Court.

There is yet another ground upon which the accepted and usual course of judicial proceedings would hold the reports admissible. We have already reviewed the facts which render them the best evidence of the matters they record. (See also, p. 20, n. 8.) The trial court is vested with a special responsibility to satisfy itself that the recantation is true. For it is under a duty both to see that justice is done to an accused as well as to protect its judgments. *United States v. Johnson*, 327 U. S. 106,

112-113; *Larrison v. United States* (C. A. 7), 24 F. 2d 82, 88; *Martin v. United States* (C. A. 5), 17 F. 2d 973, 976; *Gordon v. United States* (C. A. 6), 178 F. 2d 896, 900. But the court below sanctioned a course of proceeding in which the best evidence of the transactions in question was rendered permanently unavailable. The judge not only refused to accord petitioner access to the documents. He prevented himself from having them in the discharge of his judicial responsibilities. Additionally, this best evidence was in the possession of the government which had the ability to produce it. The judge's ruling that "they are not required . . . to produce anything from the secret files of the F.B.I." [R. 664] was in effect that the reports had no evidential value. He thus prevented himself from drawing an inference against the government and in favor of petitioner from the former's failure to produce stronger evidence within its power to present. Such a failure itself becomes "evidence of the most convincing character." *Interstate Circuit v. United States*, 306 U. S. 208, 225.

For all the reasons here indicated the complete frustration of petitioner's efforts to obtain limited access to the reports in question was a grave deprivation of a fair hearing. Matusow's testimony alone raised the government's case to the nodal point of legal sufficiency. His reference to stopping copper production for the Korean War was inflammatory. It is of the essence of the right to defend that one be permitted reasonable scope in destroying the credibility of the witnesses against him. This is the more compellingly true when, as in the case of Matusow, the witness made a profession of so testifying and his testimony consisted only of uncorroborated oral admissions, by nature the least reliable of evidence.

4 Wigmore, *op. cit.*, section 1056, 7 Wigmore, *op. cit.*, section 2094. At the trial petitioner was denied this opportunity on the very subject matter of the witness' testimony. At the hearing on the motion for new trial, the judge deemed the recantation to be untrue without giving petitioner access to the one item of evidence that might have been determinative of the question. The Court of Appeals regarded it as the product of "the machinations of evil men" [H. 849], presumably including counsel. But both courts reached these results without the benefit of the most reliable searchlight for truth. If petitioner is to be punished for a crime and denounced as a procurer of fabrication, the least that elemental fairness requires is that his judges resort to the most trustworthy avenue to truth afforded by the circumstances. Short of this, there cannot be the requisite certainty that justice has been done.

The supervisory powers of this Court may well be invoked over the difference between the determinations of the lower courts here and that of Judge Dimock with respect to another recantation by Matusow. (*United States v. Flynn* (D. C. N. Y.), 130 F. Supp. 412.) There (almost simultaneously with his recantation here) Matusow recanted his trial testimony in a Smith Act case, and at the hearing on the motion for new trial the government offered the same facts to show fabrication. But there Judge Dimock concluded that the trial testimony was "the lie." (*Idem.*, p. 416.) This, because he examined the F.B.I. reports (essentially similar to the ones sought by petitioner below) together with memoranda of interviews by government lawyers and found a pattern of embellishment in accordance with "Matusow's propensity to lie." (*Idem.*) We are of course not here con-

cerned with whether Matusow lied at the trial or in recanting. But it is more than coincidence that the different conclusion by Judge Dimock followed upon resort to the F.B.I. reports. The failure here to employ this usual and accepted instrument for ascertainment of truth reflects a disturbing inequality in the application of law protecting those accused of crime. The proceedings in this case reflect neither justice nor the appearance of justice, and there is a cloud upon the judgment.

POINT TWO.

The Court of Appeals Erred in Approving the District Court's Charge to the Jury as Well as Its Refusal to Charge on the Issue of Membership.

We have summarized in our Statement of the Case, *ante*, pages 9, 10, the objectionable features of the charge on membership. The Court of Appeals disposed of petitioner's contentions by terming them "unconvincing," adding that a substantially similar charge had been approved in *Hupman v. United States* (C. A. 6), 219 F. 2d 243, cert. den. 349 U. S. 953.

1. *The charge was an abdication by the trial court of its responsibility to guide the jury by appropriate legal criteria.* It failed to give any definition of membership. It laid down no rule or principle of law defining the relationship of member in a voluntary association or prescribing its elements or describing how it is begun or how continued. It ignored this Court's prescript that "In proving that one swore falsely that he is not a Communist, the act of joining the Party is crucial." *American Communications Assn. v. Douds*, 339 U. S. at 410-411. For the instruction nowhere tells the jury that

it must find that petitioner at any time fulfilled the "act of joining."

Failing to furnish a rubric in the form of a principle of law, the trial court gave no guidance in terms of the kind of evidence upon which the conclusion of membership might be predicated. After referring to attendance at Party meetings and holding Party office, the jury was told it "may consider" other "conduct consistent only with membership." But the jury was left to decide for itself what that conduct was. The court did not advise it what conduct was so consistent in the eyes of the law. Any appearance of legal guidance was destroyed by the language "You may consider . . . all other evidence . . . which bears or may bear upon the question of whether or not he was a member. . . .". Having failed to delineate that question the court left it to the jury to select the evidence pertaining to it.

The issue of membership was left wholly at large. To perform its task the jury had to formulate its own legal standards of membership and then apply them to whatever in the evidence the jury thought had a bearing. The words "you may consider" permitted the jury to give effect to any part of the evidence. The jury was not told what evidence, in law, bears on the question of membership. It was not advised what evidence "may bear" on that issue. The charge invited, indeed made possible, only the jury's arbitrary selection. It was as free to base its verdict on petitioner's conversation with Brooks in 1947 or his comments on an alleged Communist newspaper in 1951 as on the asserted admissions to Matusow in July and August, 1950. It could have found membership from Currie's or Peterson's or Eckert's testi-

mony of attendance at "closed Communist meetings"[11] in 1946 and 1947 as well as on Ford's testimony that petitioner held office in the Party in 1949.

Perhaps the most striking illustration of the effect of the charge is its departure from the theory upon which the case was tried. The evidence was presented on the representation that it would show a continuous relationship of membership from April, 1946 "up to and through April 28, 1950." [R. 70.] The trial court received the pre-affidavit evidence on the prosecutor's assurance that he would "follow it" with testimony "right on up to the filing of this instrument." [R. 209.] It was argued to the jury by the prosecutor on the same basis. [R. 1071, 1094, 1100-1101.] Yet under this charge the jury was not told that to find petitioner guilty it was required to find a continuity of membership from April, 1946 to August, 1950, or, indeed, for any shorter period encompassing April 28, 1950.

The Court of Appeals found the evidence to sustain the conviction "overwhelmingly" on the question of membership. Its conclusions rested on what it called "the Government's total proof that appellant was so connected before and after" April 28, 1950. But the jury was not required to find membership only if it found with the government on both the "before" and "after" evidence regarded in its totality. This wholly equivocal charge left it to the jury to find membership on any single item of

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[11]The Court of Appeals in the Ninth Circuit has held such evidence to have no probative value. For to prove the accused is a Communist by his attendance at a meeting to which only Communists are admitted is to resort to circular reasoning. *Bridges v. United States* (C. A. 9), 199 F. 2d 811, 836 (rev'd other grounds, *Bridges v. United States,* 346 U. S. 209).

"before" evidence or "after" evidence without any guidance as to the legal significance of the various kinds of testimony, the chronology of it or its continuity or lack thereof.

It was the judge's "responsibility to give the jury the required guidance by a lucid statement of the relevant legal criteria." Upon this "depended" the discharge by the jury of its "responsibility for drawing appropriate conclusions from the testimony." *Bollenbach v. United States,* 326 U. S. 607, 613. The judge provided no yardstick. He in effect told the jury to fashion its own and apply it as it might to the evidence as a whole. Under such circumstances the conviction should be reversed notwithstanding that the Court of Appeals could find what it considered abundant evidence of petitioner's guilt. For petitioner was entitled to the verdict of a jury fairly instructed, not the conclusions of an appellate court as to what could be spelled out of this record. (*Idem.*, p. 614.)

2. *The charge permitted the jury to find membership solely on the basis of the pre-affidavit evidence and was therefore in conflict with this Court's construction of the statute in American Communications Assn. v. Douds,* 339 U. S. 382, 413-414. In that case this Court held that one who had been a member of those groups identified in section 9(h) (22 U. S. C., sec. 159(h)) could sign the affidavit and retain his union position so long as he first severed his connections with the proscribed groups. The Court observed that the purpose of the statute was "to forestall future dangerous acts" which might be committed by the persons described in the statute. Thus it was held that "there is no one who may not, by a voluntary alteration of the loyalties which impel him

to action, become eligible to sign the affidavit." (339 U. S. at 414.) It was for this reason that the Court decided that the statute was not a bill of attainder.

If past membership is not a bar to executing the affidavit and holding union office, past membership, standing alone, cannot constitute proof of false swearing.[12] Otherwise the statute as construed by this Court would be a trap. This Court's gloss upon the statute is a limitation upon the scope of the statute and therefore upon the liability created under it when combined with the false statement statute. (18 U. S. C. 1001.) In criminal cases the accused is entitled to jury instructions which set out correctly the limits of liability created by the statute. This is so even where a reviewing court would take the view that the evidence clearly satisfies those limitations. For the accused must be convicted upon the jury's appraisal of the facts under proper instruction. *United Brotherhood v. United States*, 330 U. S. 395, 409-410.

The vice of the instruction here is that it ignored this limitation. It permitted the jury to return a verdict upon the pre-affidavit evidence alone, indeed, upon any part of the pre-affidavit evidence no matter how remote. The effect of the instruction is best seen in relation to the evidence. As the summary, *ante*, shows the great bulk

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[12]It is necessary to note here that in the *Hupman* case, *supra*, upon which the court below so heavily relied, there was evidence that after signing the affidavit, the accused met with Party officials and accepted from them instructions to conceal his membership. (219 F. 2d at 247.) There is no such evidence here, and the *Hupman* case has no bearing on the issue presented here.

of it was pre-affidavit. The charge invited specific attention to attendance at meetings and holding office. All evidence of this character was pre-affidavit, ranging from April, 1946 to July or August, 1949.[13] There is nothing in the charge which limits in any way the conclusions the jury might draw from the pre-affidavit evidence. It could have convicted petitioner on the Currie testimony of a 1946 meeting or the Eckert and Peterson testimony of meetings in 1947 and 1948.

We do not mean to say that evidence of pre-affidavit membership can never have any probative force in a case of this kind. The question is essentially one of the reasonableness of the inference from the past connection to connection at the time the affidavit was executed. Here are presented question of proximity and degree sufficient to exclude the hypothesis of resignation or other "voluntary alteration of loyalties." But we do not reach this problem for the instruction failed to consider them. It permitted the inference of membership on April 28, 1950 to be drawn from any of the evidence dealing with membership in the period April, 1946 to August, 1949. That error cannot be cured by the appellate court's finding the "total proof" sufficient. Whether the "total proof" satisfied the *Douds* principle is beside the point. The criteria given the jury were contrary to *Douds*.

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[13]Ford testified that "up to September in 1950" petitioner was not "replaced in his position on the State Board." [R. 386-388.] Of course the fact that he was not replaced does not mean that petitioner did not cease to hold the position. The evidence has no probative value at all.

3. *The statute as applied in the instruction on membership approved by the Court of Appeals was rendered so vague, indefinite and uncertain as to afford no ascertainable standard of guilt.* The statute requires a disavowal of membership as of the time the affidavit is executed. In the *Douds* case, *supra,* this Court interpreted the provision to permit former members to sign the affidavit and retain their union positions upon severance of the old connections. The charge permitted any one, or any combination, of many items of evidence tending to show membership as of periods long prior to the affidavit date to support an inference of membership on that date. So construed the statute affords no ascertainable notice of its requirements. Under the charge here past membership in a proscribed group itself became evidence from which membership on the affidavit date may be found. The longer the past membership, apparently, the more strong the inference of membership on the affidavit date. [See, *e.g.,* the opinion below, R. 1210.] Although the *Douds* decision, *supra,* allows for a resignation or other termination of connection, the jury was permitted to find current membership from past without any reference to a possible intervening severance.

The charge impliedly involved a presumption of continuance of the relationship in circumstances where, because of community pressures and the purely voluntary nature of the association, it became wholly unreasonable. *Maggio v. Zeitz,* 333 U. S. 56, 66. Indeed the use of such a presumption in connection with this charge places petitioner under the necessity of proving his innocence in the face of the very facts regarded in *Douds* as blameless in themselves. (Compare Mr. Justice Black, concurring in

Maggio v. Zietz, supra, pp. 80-81.) In such lights the statute becomes a trap for him who is so unwary as to rely on the plain meaning of its terms. It bears a hidden meaning not made manifest until the evidence is closed and the instructions given to the jury. Compare *Connolly v. General Constr. Co.,* 269 U. S. 385; *United States v. Cohen Grocery Co.,* 255 U. S. 81; *Herndon v. Lowry,* 301 U. S. 242.

But this does not exhaust the broad sweep of the charge. It permitted the jury to consider "evidence consistent only with membership" or "all other evidence . . . which bears or may bear upon the question." The evidence included a number of utterances by petitioner entitled to First Amendment protection and having no necessary relationship to membership. Thus his statement to Brooks in 1947 that "he was a Communist and proud of it" [R. 386-388]; or his urging his union members to read a so-called Communist newspaper because it gave the truth about union matters [R. 932]; or his comments upon the Soviet disarmament plan. [R. 592.] Under the quoted language of the charge the jury could have found membership on such evidence. Each of these is plainly a part of free discussion so necessary to the functioning of representative government. *Stromberg v. California,* 283 U. S. 359; *DeJonge v. Oregon,* 299 U. S. 353. The charge permitted the jury to attach criminal consequences to such discussion and to this extent established a standard which no reasonable person could perceive.

POINT THREE.

The Court Below Erred in Approving the District Court's Charge to the Jury on the Issue of Affiliation.

1. *The charge laid down criteria of affiliation in conflict with those defined by this Court in Bridges v. Wixon,* 326 U. S. 135. In a portion of the trial court's language, derived from Webster's Dictionary, the verb "affiliate" is said to mean "to connect or associate oneself with; to adopt, hence usually to bring or receive into close connection; to ally. . . ." [R. 1063.] Such language does not satisfy the test laid down in *Bridges.* Under that decision the closeness of the association or connection must be one "which, though not equivalent to membership duty, does rest upon a course of conduct that could not be abruptly ended without giving at least reasonable cause for the charge of a breach of good faith." (326 U. S. at 142.) But more than such a regularized alliance is necessary, for one "who cooperates with such an organization only in its *wholly lawful activities* cannot by that fact be said as a matter of law to be 'affiliated' with it." (326 U. S. at 143.) The cooperation "must evidence a working alliance to bring the proscribed program to fruition." (326 U. S. at 146.) It is this element which is wholly lacking from the charge which the Court of Appeals approved.

The trial court could have included, and the court below should have required, a definition of the proscribed objectives which had to be the object of the affiliation described in section 9(h). In the *Douds* case, *supra,* the constitutionality of the statute was sustained because Congress found that Communist Party objectives included use of trade union leadership to bring about political strikes for revolutionary objectives (339 U. S. at 388),

and it was thought rational to conclude that persons so connected might engage in such conduct. (*Idem.*, p. 392.) It was therefore to this end that the affiliation proscribed in the statute had to be directed. It was concerning affiliation of this kind that the jury should have been instructed.

Lacking this requisite the charge gave to the concept of affiliation the "dubious scope" of which Mr. Justice Frankfurter spoke in the *Douds* case. (339 U. S. at 420.) For it opened the door to consideration by the jury of association for "wholly lawful activities." Significantly these associations are always described in the testimony as "closed communist meetings." If, as the Ninth Circuit held in *Bridges v. United States, supra,* such a description has no probative force to show membership, attendance at such meetings can only show association for the objects mentioned as the subject matter of the meetings. In this case the evidence shows (Statement of the Case, *ante,* pp. 6-10), that the subject matter of the meetings embraced exclusively lawful activities.

There is a striking similarity here with the evidence held in *Bridges v. Wixon, supra,* not to make out affiliation. There this Court rejected as insufficient Bridge's cooperation with "Communist groups for . . . lawful objectives" (326 U. S. at 145); here Jencks through his union and political party worked closely with the Communist Party upon such "wholly lawful activities" as the elimination of discrimination against Mexican-Americans and the defeat of Taft-Hartley. There Bridges advised his members to read "Communist literature" because it more truthfully reported labor news (326 U. S. at 146); here petitioner did the same. [R. 932.]

The existence of such evidence in the record made imperative a charge defining affiliation in accordance with

the standards declared in *Bridges v. Wixon.* Lacking this, section 9(h) would be given so broad a sweep as to embrace ideas, program and utterances protected by the First Amendment. (326 U. S. at 148; compare *Stromberg v. California,* 283 U. S. 359; *Thornhill v. Alabama,* 310 U. S. 88.) So applied the statute would define no ascertainable standard of guilt and operate as a pervasive censorship of trade union activity and expression. *Herndon v. Lowry,* 301 U. S. 242; *Winters v. New York,* 333 U. S. 507; *Thornhill v. Alabama, supra.*

2. *The charge on affiliation was hopelessly confusing and failed to prescribe any lawful standard for the jury.* In another portion of the charge on affiliation the dictionary definition equated "affiliate" with membership—thus, "to unite or attach such a member or branch." [R. 1063.] In the next sentence appears the language, "Affiliation . . . means something less than membership but more than sympathy." In successive sentences the instruction contradicted itself. From this conflict no mind can draw anything but bewilderment. The jury was given no legal guidance for its determination of this key question of the trial.

3. *The charge on affiliation permitted the jury to base its determination solely on pre-affidavit evidence contrary to this Court's decision in American Communications Assn. v. Douds,* 339 U. S. 382. Here the jury was admonished that it could find affiliation "from all the evidence." This left the question as much at large as did the instruction on membership. The jury was free to base its finding on any portion of the pre-affidavit evidence it might select. All that has been said in the preceding point, subdivision 2, applies with equal force here.

POINT FOUR.

The Court of Appeals Erred in Approving the Admission of Evidence of a Separate Offense Not Charged in the Indictment.

Petitioner was accused of filing an affidavit containing false statements and dated April 28, 1950. [R. 2.] A National Labor Relations Board form affidavit signed by petitioner and bearing that date was received in evidence. [G-1, R. 978.] But at the same time and over objection [R. 114, 974-977] there was received a similar affidavit containing the same statements, but dated October 15, 1949. [G-7; R. 977, 989.] Neither at the time of the offer nor at the ruling did the prosecutor make a statement of purpose for the 1949 affidavit. The trial judge made no ruling and issued no admonition to the jury limiting in any way the probative effect of the exhibit. The prosecutor's summations made a number of references to it. [R. 1084, 1087, 1108, 1109, 1112, 1115, 1116.] The trial court's charge to the jury contained nothing pertaining to the exhibit. The pre-affidavit evidence all speaks of a time prior to October 15, 1949. Quantitatively it was far greater than the balance of the government's case.

The Court of Appeals approved the admission of the 1949 affidavit under the exception to the usual rule of exclusion permitting evidence of other crimes to prove motive, intent, absence of mistake or inadvertence, common scheme or plan. That court held that the 1949 affidavit showed abandonment of an earlier policy not to file such affidavits and a general scheme or plan on the part of petitioner to obtain the benefits of Labor Board procedures. [R. 1212.]

1. *The Court of Appeals sanctioned the submission to the jury of inherently confusing and misleading evidence, highly prejudicial in nature, without any instruction to the jury as to its proper evidential use.* This is another instance in which the appellate court appraised the evidence upon a legal basis not provided the jury for its determination. The trial court gave the jury no instructions concerning the probative use of the 1949 affidavit. That exhibit stands in this record without a word of explanation as to what it might properly be considered to prove. If the document was admissible to prove the elements of knowledge and intent recited by the Court of Appeals, it was the obligation of the trial court so to instruct the jury. *Weiss v. United States* (C. A. 5), 122 F. 2d 675, 683; *Tedesco v. United States* (C. A. 9), 118 F. 2d 737, 740. For it is the obli tion of the trial court to instruct the jury on the law applicable to a factual issue submitted for the latter's determination. *Bollenbach v. United States, supra; Todorow v. United States* (C. A. 9), 173 F. 2d 439, 445. This is the more important here when courts generally, including the one below, recognize that such evidence can confuse the jury and lead to a conviction because the accused is regarded as an evil man. *Railton v. United States* (C. A. 5), 127 F. 2d 691, 693; *Kempe v. United States* (C. A. 8), 151 F. 2d 680, 687-689; *Boyer v. United States* (C. A. D. C.), 132 F. 2d 12, 13; *United States v. Modern Reed and Rattan Co.* (C. A. 2), 159 F. 2d 656, 658; *Lovely v. United States* (C. A. 4), 169 F. 2d 386.

2. *The decision of the Court of Appeals in holding the evidence admissible to show knowledge and intent was in conflict with decisions of Courts of Appeals in the Second and Fourth Circuits.* The Court of Appeals held

that the 1949 affidavit was admissible to show that petitioner "knew that it was necessary to file the affidavit in order to obtain those advantages" (from the Labor Board) and that he intended thereby to obtain them. [R. 1213.] The face of the statutes (29 U. S. C., sec. 159(h) and 18 U. S. C., sec. 1001) is persuasive that the only mental state forming part of the crime charged was a deliberate filing of a knowingly false affidavit. But whatever the precise *mens rea,* the 1949 affidavit was not competent to prove it. In prosecutions where the gist of the offense is falsehood evidence of prior utterances of the falsehood is not competent to prove knowledge of the falsity on the occasion charged unless that evidence is accompanied with facts showing knowledge of the falsity in the prior utterance. The mere fact that a statement was twice made does not show that the accused knew it to be false. *Boyer v. United States* (C. A., D. C.), 132 F. 2d 12, 13; *United States v. Rossi* (C. A. 2); 182 F. 2d 292, 293.

Here the necessary accompanying evidence was lacking. The 1950 affidavit [R. 978-979] appears to be in precisely the same form as the 1949 document. [R. 989-990.] Each contains the same signature, and each signature was identified as petitioner's by at least two witnesses. [R. 127, 137.] So far as knowledge of falsity is concerned, the Court of Appeals did not, because it could not, point to any other evidence showing petitioner's knowledge that the 1949 affidavit was false.[14] On the elements of knowl-

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[14]The government argued at the trial and to the Court of Appeals that the statement attributed to petitioner in G-24 [R. 968] that "our union has signed the phony affidavits" was an admission of falsity in the 1949 instrument. By the dictionary (Funk & Wagnalls, 1953; Webster, 1953) "phony" means "counterfeit", "non-genuine", "bogus". The cases recognize a clear distinction between

edge and intent held by the Court of Appeals to be requisite each document furnished precisely the same evidence. For on the reverse side of each appears the identical instruction that each officer of the union must file such an affidavit before the organization "may receive the help of the National Labor Relations Board." [R. 979, 990.] The court below said the 1949 affidavit showed a change of a former union policy in opposition to filing. [R. 1212, 1214.] But it showed on that score nothing different from the 1950 affidavit. Neither could have been filed unless the policy was changed, and it proves nothing relevant to the offense charged to show that the change of policy occurred at one time prior to the filing rather than another.

POINT FIVE.

The Court of Appeals Erred in Approving the Action of the District Court in the Giving and Refusal of Instructions on the Credibility of Informers.

In our Statement of the Case, *ante,* we have shown that the witnesses Ford and Matusow were, during the period and in connection with the incidents covered by their direct testimony, employed by the F.B.I. as informers. We have already referred to Matusow's financial return from this form of spying and serving as an anti-Communist expert. Ford realized substantial returns for his years of service in a more modest capacity. [R. 408.] As to each of them it is appropriate to observe that he

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a non-genuine statement and a false or untrue statement. *United States v. Mulligan* (C. A. 2), 59 F. 2d 200, 201; *Wright v. United States* (C. A. 9), 172 F. 2d 310, 311; *United States v. Smith* (D. C., Ind.), 262 Fed. 191. The Court of Appeals apparently did not accept the government's view of this statement. [R. 1212-1215.]

was "a dangerous instrument" because ". . . the amount of his pay depends on the extent of his employment, and the extent of his employment depends on the discoveries he is able to make." (*Sopwith v. Sopwith*, 4 Sw. & Tr. 243, 247, 147 Eng. Repr. 1509.) Our law recognizes the bias and interest of such persons as well as their low character. *District of Columbia v. Clawans*, 300 U. S. 617, 630-631; *Colyer v. Skeffington* (D. C., Mass.), 265 Fed. 17, 69.

The error in the trial court's instruction was that it told the jury that it "may consider" that these witnesses "received money for services and expenses in furnishing information" to the F.B.I. [R. 1064], but failed to provide a standard by which their considerations were to be guided. For all that appeared the jury could hold this to their credit, not as a limitation on their trustworthiness. Petitioner asked that the jury be charged to "approach their testimony with caution and weigh it with great care." [R. 1117-1118.] Such language would have provided the jury with guidance as to the effect to be given to the facts of employment as an informer.

The court below approved both the instruction given as well as the refusal of the charge proffered. It reasoned that ". . . the Government has nothing to do with selecting the witnesses. The witnesses against appellant were determined when appellant chose those with whom he would fraternize." [R. 1218.] The idea that any person knowingly associates with a police operative whose very function is to conceal his true identity and character ignores reality. A chance meeting with such a person at a vacation resort cannot be regarded as knowing fraternization.

In approving the refusal to give a precautionary instruction of the kind requested here the court below rendered a decision in conflict with those of the Court of Appeals of the District of Columbia. As we apprehend the holdings of that court they require a precautionary instruction where asked for and the informer is not corroborated. *Fletcher v. United States* (C. A., D. C.), 158 F. 2d 321, 322; *Cratty v. United States* (C. A., D. C.), 163 F. 2d 844, 850. See also *Kelly v. United States* (C. A., D. C.), 194 F. 2d 150, 153.

This record satisfies those conditions. Petitioner's request for the charge has already been indicated. Matusow was in no way corroborated within the meaning of these cases. He was the only witness to the incidents who was called. No one testified even to so much as circumstances showing that Matusow had access to petitioner during the period when the conversations took place.

It has already been shown that Matusow was essential to the prosecution and that his credibility was under severe attack. In this context the jury's proper evaluation of his credibility affected the fairness of the trial. At his best Matusow was revealed as a hired informer of the Department of Justice who, once he had emerged as a witness, found ways to convert his purported discoveries into political capital and substantial earnings. Precisely the kind of "dangerous" person described in the *Sopwith* case, *supra*, his unreliability was aggravated by the fact that, having given up his work as a secret operative, his continued earnings and associations with the highly placed depended on his recollection of the past. It would be difficult to imagine a case in which the need for the precautionary instruction would be more pressing.

In the case of Ford the failure to give the charge was also prejudicial. His information was the product of work as a secret operative. He was paid substantially for his services. [R. 408.] His testimony was not corroborated. Next to Matusow, Ford was the most important witness the prosecutor presented. For it was he who said that petitioner had been an officer in the Communist Party in New Mexico and had attended meetings of the Party as late as July or August, 1949. The testimony of all other witnesses who connected Jencks with the Party was far more remote.

It is fair to say that the testimony of Matusow and Ford may alone have turned the scales against petitioner in the jury room. The jury was denied any guidance as to the legal standards by which the trustworthiness of such people is determined.

POINT SIX.

The Court of Appeals Erroneously Affirmed the Action of the District Court in Approving the Systematic and Purposeful Exclusion of Women From the Jury System.

At the outset it should be noted that this point was not discussed or referred to in the opinion of the Court of Appeals. The appellate court's affirmance of the judgment of conviction however necessarily imports its determination of this important question of federal law as yet not decided by this Court.

(a) The Exclusion of Women Violates the Plain Meaning and Purpose of the Governing Statute.

1. The face of the statute discloses a purpose to qualify persons for federal jury service on an individual basis and to exclude no groups of the population. It

provides that "any citizen of the United States" is "competent" to serve who is 21 or over and a resident of the judicial district. These qualifications are obviously on an individual basis—citizenship, age and residence. The exclusions of the next three subdivisions are on similar bases—unpardoned felons, persons illiterate in the English language, those physically or mentally incapacitated. So far there is no disqualification of any group whether defined by sex, race, economic standing, religion or otherwise.

By the final subdivision there are disqualified those who are "incompetent" by the law of the state where the District Court sits. Consistency with the plan to qualify "any citizen" who meets the preceding individual qualifications requires that this exclusion operate also on an individual basis. This is accomplished by giving recognition to state qualifications such as property or interest in the litigation or prior jury service or consanguinity with the litigants. (See, *e.g.*, the subdivisions of Art. 2133, 2134 Texas Civil Stat.) Otherwise state law would rise superior to federal law and cut down the scope of "any citizen." In the case of specific conflict between state and federal statute, as a state law making persons "competent" only when aged 25, surely the federal law would prevail. No less directly would a state statute conflict with section 1861 if it worked a group disqualification.

2. The legislative object disclosed by the history of the section shows a purpose not to effect the exclusion of groups as well as to attain uniformity in the Districts irrespective of state laws. Section 1861 replaces 28 U. S. C. A., section 411 (1946 ed.). This Court has repeatedly held that the purpose of the old enactment was to achieve

a jury "truly representative of the community." *Glasser v. United Staes,* 315 U. S. 60; *Ballard v. United States,* 329 U. S. 187; *Thiel v. Southern Pacific,* 328 U. S. 217. There is nothing in the history of section 1861 indicating an abandonment of that aim. The broad language "any citizen" is a significant departure from the former text in the direction of greater, not less, representativeness.

Moreover, the decided cases under the old statute had held that group exclusions were inconsistent with representativeness. Thus in *Ballard, supra,* the exclusion of women as a group was held destructive of the representative quality required by the statute. In *Thiel, supra,* the exclusion of hourly paid workers brought about the same result. The exclusion of Negroes was held also to destroy representativeness, although the case did not arise under the federal statute. *Smith v. Texas,* 311 U. S. 128. It would require an unmistakably plain manifestation of Congressional intent to find in the new statute a purpose to effect group exclusion.

The new enactment added as a Congressional objective that of uniformity, thus changing the old law under which the qualifications applied in the District Courts reflected the diversity among the states in which the federal courts functioned. The Revisers Notes, carried in the reports of both Congressional Committees (Title 28, United States Code, Congressional Service, 80th Cong., 2d Sess., pp. 1676, 1697, 1880), say of Section 1861 that it "prescribes uniform standards of qualification for jurors" and eliminates qualifications based on state laws, all as recommended by the Judicial Conference. (28 U. S. C. A., following Sec. 1861.) The recommendations of the Judicial Conference had specifically urged the qualifica-

tion of women for federal service "irrespective of state laws." (Report of Judicial Conference of Senior Circuit Judges, 1943, p. 23.) Those recommendations had been reaffirmed by the Conference in 1944 and 1946. (Report of Judicial Conference of Senior Circuit Judges, Oct. 1946; Blume, *Jury Selection Analyzed*, 42 Mich. L. Rev. 831.) At the time the new section was enacted there was no uniformity among the states on the eligibility of women for jury service. Forty states made them eligible on an absolute or limited basis and eight states barred them entirely. (Blume, *op cit.*, p. 853.) Plainly the aim of uniformity embraced specifically the uniform qualification of women in all federal judicial districts. To read subdivision 4 of section 1861 as importing into federal law the group exclusions of the archaic Texas law would frustrate the manifest legislative purpose of uniformity to include uniform qualification of women.

3. The state of the case law at the time the new section was adopted is strongly persuasive of an intent not to permit the exclusion of women by virtue of the operation of a state law. In *Ballard, supra,* this Court said that the exclusion of either sex as such "may indeed make the jury less representative of the community than would be true if an economic or racial group were excluded." (329 U. S. at 194.) In *Glasser* it was recognized that representativeness, including representation of women, was part of the concept of fairness and impartiality of the jury, required by the Sixth Amendment. *Glasser v. United States,* 315 U. S. at 84-85. See also *United States*

v. Roemig (D. C., Ia.), 52 F. Supp. 857, 862. Finally, before section 1861 was adopted this Court had warned that neither the federal courts *nor the Congress* could accomplish the exclusion of a group by the simple expedient of incorporating a state law by reference. *Thiel v. Southern Pacific Ry.*, 328 U. S. at 221.

(b) The Exclusion of Women Violates the Fifth and Sixth Amendments.

Representativeness is also a constitutional requirement. Representativeness in *Glasser v. United States*, 315 U. S. at 85 was said to be part of "our notions as to what a proper jury is." And that "notion" is "inextricably intertwined" with the Sixth Amendment's guarantee of an impartial jury. (*Idem.*) While it has never been necessary for this Court to decide the point on constitutional grounds, it seems impossible to conceive of a jury system that would satisfy the requirements of the Sixth Amendment while at the same time systematically excluding one-half the adult population. If the sexes are not "fungible" (*Ballard*, p. 193) the calculated barring of either renders unattainable a truly representative quality. Moreover to submit one accused to an all male jury and another to a jury drawn from men and women equally, solely for reasons of geography, denies equal application of section 1861. To decide the matter on constitutional grounds might well put an end to efforts to frustrate the constitutional objective by the device of statutory manipulation.

Conclusion.

For the reasons advanced herein, the petition should be granted and the writ of certiorari issued.

Respectfully submitted,

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APPENDIX.

Statutes Involved.

29 *United States Code,* section 159(h).

"(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 160 of this title, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not, a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of sections 286, 287, 1001, 1022, and 1023 of Title 18 shall be applicable in respect to such affidavits."

18 *United States Code,* section 1001.

"§1001. *Statements or entries generally.*

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the

same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

28 *United States Code,* section 1861.

"§1861. *Qualifications.*

"Any citizen of the United States who has attained the age of 21 years and resides within the judicial district, is competent to serve as a grand or petit juror unless:

"(1) He has been convicted in a state or federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty.

"(2) He is unable to read, write, speak and understand the English language.

"(3) He is incapable, by reason of mental or physical infirmities to render efficient jury service.

"(4) He is incompetent to serve as a grand or petit juror by the law of the State in which the district court is held."

Texas Civil Statutes, Article 2133.

"All men over twenty-one years of age are competent jurors, unless disqualified under some provision of this chapter. No man shall be qualified to serve as a juror who does not possess the following qualifications:

"1. He must be a citizen of the State and of the county in which he is to serve, and qualified under the constitution and laws to vote in said county; provided, that his failure to pay poll tax as required by law shall not be held to disqualify him for jury service in any instance.

"2. He must be a freeholder within the State, or a householder within the county.

"3. He must be of sound mind and good moral character.

"4. He must be able to read and write, except in cases provided for in the succeeding article.

"5. He must not have served as a juror for six days during the preceding six months in the district court, or during the preceding three months in the county court.

"6. He must not have been convicted of felony.

"7. He must not be under indictment or other legal accusation of theft or of any felony. Whenever it shall be made to appear to the court that the requisite number of jurors able to read and write cannot be found within the county, the court may dispense with the exception provided for in the fourth subdivision and the court may in like manner dispense with the exception provided for in the fifth subdivision, when the county is so sparsely populated as to make its enforcement seriously inconvenient."

Texas Civil Statutes, Article 2134.

"The following persons shall be disqualified to serve as jurors in any particular case:

"1. Any witness in the case.

"2. Any person interested, directly or indirectly, in the subject matter of the suit.

"3. Any person related by consanguinity or affinity within the third degree to either of the parties to the suit.

"4. Any person who has a bias or prejudice in favor of or against either of the parties.

"5. Any person who has sat as a petit juror in a former trial of the same, or of another case, involving the same questions of fact."

United States Constitution, First Amendment.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

United States Constitution, Fifth Amendment.

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

United States Constitution, Sixth Amendment.

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."

United States Constitution, Art. I, section 9, clause 3:

"No Bill of Attainder of *ex post facto* Law shall be passed."

SUBJECT INDEX

PAGE

1. Access to the F. B. I. records 2

2. The adequacy of the trial court's charge on the issue of affiliation 7

3. The adequancy of the trial court's charge on the issue of membership 9

Conclusion 12

Appendix:

Opinion of the Court of Appeals for the Ninth Circuit in Fisher v. United States ..... App. p. 1

Excerpts from the decision of the Court of Appeals for the Seventh Circuit in United States v. Lightfoot ..... App. p. 19

TABLE OF AUTHORITIES CITED

CASES — PAGE

American Communications Association v. Douds, 339 U. S. 382 ..... 8, 10

Bridges v. Wixon, 326 U. S. 135 ..... 7, 8

Fisher v. United States (C. A. 9, No. 14,731, Feb. 15, 1956) 1, 2, 3, 7, 9, 11, 12

Goldman v. United States, 316 U. S. 129 5

Gordon v. United States, 344 U. S. 414 ..... 3, 4, 5

Hupman v. United States, 219 F. 2d 243, cert. den. 349 U. S. 953 ..... 7, 10, 11

United States v. Andolschek, 142 F. 2d 503 6

United States v. Cohen, 145 F. 2d 82 4

United States v. Flynn, 130 Fed. Supp. 412 5

United States v. Grayson, 166 F. 2d 863 6

United States v. Krulewitch, 145 F. 2d 76 ..... 4, 6

United States v. Lightfoot (C. A. 7, No. 11,470, Jan. 12, 1956) 4, 12

NEWSPAPER

New York Times (Editorial), July 8, 1954 ..... '5

STATUTES

United States Code, Title 18, Sec. 1001 2

United States Code Annotated, Title 29, Sec. 159(h) 2, 8

United States Constitution, First Amendment 9, 12

United States Constitutoin, Fifth Amendment 12

TEXTBOOK

4 Wigmore, Evidence, Sec. 1056 5

7 Wigmore, Evidence, Sec. 2094 5

IN THE

Supreme Court of the United States

October Term, 1955.
No 596

CLINTON E. JENCKS,

Petitioner,

vs.

UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

Petitioner's Reply to Government's Opposition.

The main burden of this Reply is to direct the Court's attention to the recent decision of the Court of Appeals for the Ninth Circuit in the case of *Fisher v. United States* (C. A. 9, No. 14,731, decided Feb. 15, 1956).* There a unanimous court, in an opinion by Chief Judge Denman, has rendered a decision which on three points is in conflict with the decision of the court below. These points are:

1. The right of the accused to F. B. I. records containing admissions by a government witness which may have evidentiary value for impeachment.

*The opinion is as yet unreported. A copy is set out in the Appendix.

2. The adequacy of the trial court's charge on the issue of affiliation.

3. The adequacy of the trial court's charge on the issue of membership.

The *Fisher* case was a prosecution under 18 U. S. C. 1001 for filing a false non-communist affidavit under section 9(h). (29 U. S. C. A., sec. 159(h).) The indictment alleged falsity in the denials of membership in and affiliation with the Communist Party. The problems of proof and of legal definition of membership and affiliation were the same as in this case. On the points enumerated the *Fisher* case is indistinguishable from the instant case.

The discussion which follows is directed to the foregoing three points to show the applicability of the *Fisher* opinion and to offer some observations on the Government's arguments in opposition.

1. Access to the F. B. I. Records.

In the *Fisher* case the accused sought production of the receipts prepared by the F. B. I. which one of the Government's informers had signed in return for money paid him and his wife by the F. B. I. The informer had testified that he and his wife had served the F. B. I. for 11 years, advancing their own expenses and donating their services, and that the money they had received was only reimbursement for their out-of-pocket expenses. The accused demanded production of the receipts to show, if he could, that the informer had acknowledged payment of money to them for their services. In this way he sought to destroy what the Court called the "powerful effect" of the informer's claimed devotion and patriotism. The Court held that the trial court's refusal to require the production of the receipts was "substantial error." (App. 8.)

The receipts sought in the *Fisher* case were documents signed by the witness on the stand. They were his declarations, made and executed by him. They were to be used in cross-examining him. The reports in the case at bar were made by the witness and were his declarations. Petitioner sought inspection of them so as to use them on cross-examination. The receipts in *Fisher* and the reports here stand on the same evidentiary footing.

In *Fisher* the demand was for the production of receipts extending over a period of 11 years. In the present case the request was made for reports concerning the matters and things Matusow saw or heard in the vacation ranch within the space of one month in the period of 1950, the court to examine them and release to petitioner only those contradicting the witness' direct. The description of the documents in the case at bar is at least as specific as in the *Fisher* case.

The decision in *Fisher* is in conflict with that below not simply because on a similar showing the Ninth Circuit held that the records should have been produced. It also lies in the fact that in *Fisher*, contrary to the court below (Pet'n App. 94), no condition was laid down that before production is ordered a showing be made that the requested document is inconsistent with the witness' testimony. The Court of Appeals in the case at bar bottomed its ruling that such a foundation is necessary upon this Court's decision in *Gordon v. United States*, 344 U. S. 414.*

But the conflict among the circuits is more extensive. The rule in the Second Circuit is that the prior statements of the witness will be ordered produced to the trial court, to be examined by it and turned over to the defense if

*The Government's position here is likewise based on the *Gordon* case. (Opp'n, pp. 18-19.)

impeachment value appears. That Court has specifically said that there need be no prior showing of inconsistency in order to have the document produced to the trial court.* In the Ninth Circuit production of the witness' prior declaration has been required without a showing in advance that it is inconsistent with his testimony. In so holding that court made no reference to the *Gordon* case. In addition to the holding of the court below, the Seventh Circuit, in *United States v. Lightfoot* (C. A. 7, No. 11,470, decided Jan. 12, 1956) ** holds that a prior showing of inconsistency must be made before production of the document will be ordered.

The decisions of the Second Circuit were rendered long before this Court's ruling in the *Gordon* case. The *Krulewitch* opinion was cited with approval in *Gordon*. (344 U. S. at 419, n. 11.) The decision of the Ninth Circuit in the *Fisher* case came after the *Gordon* case and the opinion gave no consideration to that ruling.*** The decisions of the court below and of the Seventh Circuit rely on the *Gordon* case. In that case this Court did not reach the problem presented here or in the *Fisher* and *Lightfoot* cases (production in the absence of a showing of contradiction between the document and the testimony) and carefully limited its ruling to the narrow facts there presented. (344 U. S. at 418.) Moreover the citation in the opinion below and in the *Lightfoot* opinion of cases dealing not with original statements of the witness on the stand for

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United States v. Krulewitch (C. A. 2), 145 F. 2d 76, 79; *United States v. Cohen* (C. A. 2), 145 F. 2d 82, 92.

**The opinion is not yet reported. Petition for Certiorari is now pending and a full copy of the Opinion is appended to that Petition. The portion dealing with the point here under discussion is reproduced in the Appendix.

***For the reasons stated in the Petition (p. 21), the *Gordon* decision has no application to the case at bar or to the *Fisher* case.

purposes of his cross-examination (as is presented here and was presented in *Gordon*) but with work-product records of a government agent,* leaves confusion as to the applicable principles. In these lights, the minimal conclusion must be that the proper application of this Court's ruling in the *Gordon* case is in substantial doubt.

This uncertainty gravely affects the sound administration of criminal justice. The use of informers in cases involving political ideas and association, and their chronic unreliability,** calls at the very least for exhaustive means for ascertaining the facts. To be decided is the extent to which cross-examination to that end is to be curtailed simply because the necessary tools for it (in this case a contemporaneous report) are in the possession of the prosecutor. Without truth no judgment rests on a secure foundation.

On the practical side, the position of the court below and of the Government here must of necessity largely frustrate the search for truth precisely where the need for probing cross-examination is the greatest.*** It is virtually impossible to develop the contradiction between the document and the witness' testimony except from the witness himself. Aside from any propensity to protect the case of his hirer, the informer may honestly say that he does not remember the contents of a report several

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*E.g., *Goldman v. United States*, 316 U. S. 129, 132.

**Whether this be in Smith Act cases (*cf. United States v. Flynn* (D. C., N. Y.), 130 Fed. Supp. 412) or in so-called loyalty cases, the damage to our institutions and our traditional freedoms, as well as to personal reputation, has been incalculable. (See, *e.g.*, *N. Y. Times*, Editorial, July 8, 1954.

***In the case at bar the informer Matusow testified to uncorroborated oral admissions, the weakest and least reliable kind of evidence. 4 Wigmore, Evidence, sec. 1056; 7 Wigmore *op. cit.*, sec. 2094.

years old, or in good faith deny a contradiction that in fact exists. Where the demand for the statements is, as here, specific, the Government is amply protected by having the trial court examine them to determine their value for impeachment purposes. Bringing the prosecution ends the Government's privilege to withhold the documents,* and the court's examination ensures that only material and relevant papers will be turned over. Insistence upon any further preconditions serves no valid governmental interest and obstructs the ascertainment of facts needful to the difficult process of ascertaining truth.

There is irony in the situation here for the contradiction between Matusow's direct, at the trial, and his F. B. I. reports were developed at the new trial hearing where he recanted his trial testimony. The Government's version of the hearing testimony (Opp'n, p. 22) we cannot accept as complete. The full facts are set out in our Petition. (Pp. 13-14.) Surely in such a situation, where the contradiction has been shown as fully as any preliminary foundation could spell it out, the attempt to justify denial of access to the reports is mere insistence on formality. The judgment against petitioner is not yet beyond recourse. Surely the appearance, and probably the reality, of justice would be destroyed in this case if petitioner were to go to jail without ever having had resort to these most telling lodestars of truth.

United States v. Andolschek (C. A. 2), 142 F. 2d 503, 506; *United States v. Krulewitch, supra; United States v. Beekman* (C. A. 2), 155 F. 2d 580, 584; *United States v. Grayson* (C. A. 2), 166 F. 2d 863, 870. With exceptions not here important the Government as a party to civil litigation is subject to the discovery rules. Anno. 95 L. Ed. 425; 445-448.

2. The Adequacy of the Trial Court's Charge on the Issue of Affiliation.

In the *Fisher* case the trial court's instruction on the issue of affiliation was virtually identical with that given by the trial court in the case at bar. In *Fisher* the trial court told the jury that the word "affiliated" as used in the indictment and the statute had "no unusual or different meaning apart from [its] normal or common usage." It then read a portion of Webster's definition of "affiliate" as follows:

> "To connect or associate oneself with; to adopt, hence usually to bring or receive into close connection; to ally."*

The Court of Appeals in *Fisher* held that this definition was erroneous in that it did not contain the elements of mutual dependability and working alliance to bring a proscribed program to fruition, which this Court laid down in *Bridges v. Wixon*, 326 U. S. 135. (App. pp. 15-16.)

The court below on the other hand approved the dictionary definition of "affiliation" out of hand and without discussion of the application of the rule of *Bridges v. Wixon*. This it did on the authority of *Hupman v. United States* (C. A. 6), 219 F. 2d 243, cert. den. 349 U. S. 953. An examination of the *Hupman* opinion (219 F. 2d at 249) discloses that the Court there did not refer to the principles laid down in *Bridges v. Wixon*.

There can be no doubt that the holding of the Ninth Circuit in the *Fisher* case is in direct conflict with the

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*The trial court in the case at bar used the same definition but included additional language, viz., "to unite or attach such as a member or branch." We do not here discuss the problems thus presented.

holding of the Fifth Circuit in the instant case as to the standard of affiliation to be employed in criminal prosecutions based upon section 9(h). It would appear that the Ninth Circuit is the first Court of Appeals, confronted with the problem in a section 9(h) case, to indicate by its opinion that it has given any attention to the ruling of *Bridges v. Wixon.*

The Government contends (Opp'n, pp. 27-29) that the *Bridges* case does not apply. The Government urges that the statute in the *Bridges* case showed "Congressional concern with the unlawful purposes" of the proscribed organization, whereas here there is no such concern, the question merely being one of affiliation *vel non*. But this overlooks the legislative history of section 9(h) as noticed by this Court in *American Communications Association v. Douds,* 339 U. S. 382, 388, 392. There this Court, in order to save the constitutionality of the section, found that Congress was "concerned" with the asserted policy of the Communist Party to call strikes for political purposes. The concept "affiliation" is by its nature so broad that, unless narrowly drawn as in the *Bridges* case, its contours encompass activities entitled to First Amendment protection. Moreover, unless the concept is narrowly construed, one called upon to take the prescribed oath is confronted with a statute that suffers from Fifth Amendment vagueness. The statute would not give adequate warning of what it is he is abjuring so that he is not provided with an ascertainable standard of possible guilt.

In both the *Bridges* case and the *Douds* case this Court has sought to resolve those problems by reference to a definition of affiliation predicated in part upon association for a proscribed purpose. It found the basis for so doing in express legislative intent. Congress could not have

willed a broader meaning, nor this Court have approved it, without far-reaching inroads upon the protections extended by the First Amendment and the due process clause.

3. The Adequacy of the Trial Court's Charge on the Issue of Membership.

In the *Fisher* case the Court defined membership in dictionary terms, reminding the jury that the word "member" in the indictment and statute had "no unusual or different meaning apart from [its] normal or common usage." The Court gave Webster's definition of "member" as follows:

> "One of the persons composing a society, community or party; an individual who belongs to an association."

The trial court in that case refused an instruction setting out "the formal requirements for membership in the Communist Party, applying and being accepted, accepting the principles of the Party, acting for the Party and paying dues and attending Party meetings." The Court of Appeals in *Fisher* held that the instruction as given was erroneous because it failed to break down membership "into its component elements," that is, into the "formal requirements for membership as stated in its Constitution." (App. pp. 13-15.)

The decision of the court below is squarely in conflict with that in the *Fisher* case. As pointed out in our Petition (pp. 26-29) the trial court in this case virtually told the jury that it could find whether defendant was a member from any evidence which it thought bore on the question, thus leaving the matter more at large than under the dictionary definition in *Fisher*. The trial court also

refused petitioner's proposed instruction requiring a finding that the accused had fulfilled the formal requirements of membership prescribed by the Party. [R. 1120-1121]*

The court below approved the instruction given as well as the refusal of the instruction requested on the authority of the *Hupman* case, *supra*. It will be recalled that neither the court below nor the court in the *Hupman* case set out any legal reasoning or authorities by which their conclusions were reached. (219 F. 2d at 249.)

It is therefore apparent that the conflict between the court below and the Ninth Circuit is square and irreconcilable on the necessity of instructing the jury that to find membership it must find that the accused has complied with the "formal requirements for membership" laid down by the Party. As Chief Judge Denman's opinion points out, such an instruction is essential to satisfy the requirement laid down by this Court in the *Douds* case, *supra*, that "punishment is restricted to acts done with knowledge that they contravene the statute" and "no honest untainted interpretation . . . is punishable." (339 U. S. at 413.) Nothing less will satisfy the due process requirement of an ascertainable standard of guilt. This consideration was apparently ignored by the court below.

The Government's Opposition (p. 24) dismisses the need for adequate instruction on the legal definition and formal requirements of membership on the ground that this is a "familiar concept and obviously used in its fa-

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*The Government made no effort to prove what the formal requirements for membership were or that they had been met in whole or in part. The only testimony on the subject is that of Eckert, who said that the Party's Constitution "contains provisions dealing with conditions for obtaining and retaining membership in the Communist Party." [R. 1002.]

miliar sense." But the Court in the *Fisher* case rejected this contention, saying that the jury "should have been reminded of the components of the term membership." Obviously this is so if the jury's verdict is to reflect a finding of fact governed by applicable law.

The Government also would justify a finding of membership from evidence which merely shows conduct consistent with membership. (Opp'n, p. 26.) As we noted in the Petition (pp. 27-29), the jury was not instructed that it could base its finding only upon conduct consistent with membership, but rather upon that or anything else in the evidence which it considered bore on the question. The Government's position is predicated on the assumption that the evidence shows a policy, applied to and followed by petitioner, to conceal membership. It points to evidence in the *Hupman* case (219 F. 2d at 248) to the effect that Hupman received and accepted instructions from Party leaders to conceal his membership. There is no such evidence in this case, and there is no evidence that petitioner was subjected to or subscribed to any such policy. Significantly in the *Fisher* case there was evidence of general Party policy for union leaders to drop overt connections with the Party. But the Court there did not conclude that such evidence dispensed with the traditional responsibility of the Court to instruct the jury on the applicable law by giving a charge requiring a finding that the accused had complied with the formal requirements of membership.

Conclusion.

For the reasons stated herein, the importance of this case to the administration of justice in the criminal courts has been increased by the developments since the Petition was filed. The importance of a clear rule concerning the availability of informers' prior declarations for purposes of testing the accuracy of their testimony has been etched in urgent terms by the decisions of the Ninth Circuit in *Fisher* and the Seventh Circuit in *Lightfoot*. The need for clear instructions on applicable law dealing with the subjects of membership and affiliation, in order to avoid constitutional infirmities under the First and Fifth Amendments, have been sharply posed by the decision in the *Fisher* case as compared with the decision here. For all these reasons, the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX.

Opinion of the Court of Appeals for the Ninth Circuit in Fisher v. United States.

United States Court of Appeals for the Ninth Circuit.

Avalo Allison Fisher, Appellant, vs. United States of America, Appellee. No. 14,731, Feb. 15, 1956.

Appeal From the United States District Court For the Western District of Washington, Northern Division.

Before: DENMAN, Chief Judge, BONE, Circuit Judge and BYRNE, District Judge.

DENMAN, Chief Judge:

Fisher appeals from a conviction on four counts of violating 18 U. S. C. §1001 by filing non-communist affidavits in the years 1951 and 1952 to comply with 29 U. S. C. §159(h), the Taft-Hartley Act, which contained false statements about his memberships and affiliations. He contends that the indictment was defective in three respects, that the trial judge erred in excluding and admitting evidence, that the jury was improperly instructed, and that the United States failed to prove a case against him.

The relevant statutes provide as follows:

"§1001. Statements or entries generally.

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent state-

ment or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

"§159(h).

No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 160 of this title, unless there is on file with the Board *an affidavit* executed contemporaneously or within the preceding twelve-month period *by each officer of such labor organization* and the officers of any national or international labor organization of which it is an affiliate or constituent unit *that he is not a member of the Communist Party or affiliated with such party,* and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provision of section 35 A of the Criminal Code [now 18 U. S. C. §1001] shall be applicable in respect to such affidavits." [Emphasis added.]

I. THE INDICTMENT.

Appellant contends that the indictment failed to set out the essentials of the offense charged, that it failed to set forth with sufficient precision and clarity the manner in which the offenses were committed, and that it improperly charged six crimes where only three acts had taken place.

(a) *The absence of an allegation of materiality.* Appellant contends that the indictment failed to charge one of the essential elements of the crime in that it failed to charge that the false statements alleged to have been in

the affidavits were "material." In Rolland v. United States, 200 F. 2d 678 (Cir. 5, 1953) a conviction under 18 U. S. C. §1001 was reversed for such a failure. Appellant concedes that the indictment did not have to use the word "material" but could have charged facts which would have indicated that the statements were material. However, appellant contends that the facts which would have indicated that the statements were material, and which were not alleged, were (1) that the statement was filed to secure compliance with Section 159(h), (2) that appellant was a union leader required to file, and (3) that he filed in order that his union might use the facilities of the National Labor Relations Board.

The Government contends that "materiality" is not an essential element of the crime of filing a false written document but that the term applies only to the first section of 18 U. S. C. §1001 dealing with making a concealment of a material fact. United States v. Lange, 128 F. Supp. 797 (S. D. N. Y. 1955); United States v. Varano, 113 F. Supp. 867 (M. D. Pa. 1953). The language of Section 1001 seems to justify such a construction. However, even if an opposite construction is taken, appellant has not alleged that this defect in the indictment was prejudicial nor has he made any showing to this effect. Appellant knew the materiality of his statement. The statements ultimately proved were certainly material. If this is error, it is harmless error under F. R. Crim. P. 52(a).

(b) *The charge of "affiliation."*

Appellant contends that the charge of "affiliation" in the Second, Fourth and Sixth Counts of the indictment, standing alone, is so vague as to give no fair or adequate notice of the offense charged. He contends that the Su-

preme Court in American Communications Association v. Douds, 339 U. S. 382, 412-413 (1950) in construing Section 159(h)'s term "affiliated" to avoid unconstitutional vagueness in effect required: (1) the charge of affiliation to be defined so the defendant will be informed as to what conduct of his the Government considers affiliation, and (2) the charge that the defendant knew that such specified conduct constituted "affiliation." The indictment in this case did neither.

What the Supreme Court said in the Douds case concerning the term affiliated was as follows:

"The argument as to vagueness stresses the breadth of such terms as 'affiliated,' 'supports' and 'illegal or unconstitutional methods.' There is little doubt that imagination can conjure up hypothetical cases in which the meaning of these terms will be in nice question. The applicable standard, however, is not one of wholly consistent academic definition of abstract terms. It is, rather, the practical criterion of fair notice to those to whom the statute is directed. The particular context is all important.

"The only criminal punishment specified is the application of §35(a) of the Criminal Code, 18 U. S. C. §1001, which covers only those false statements made "knowingly and willfully." The question in any criminal prosecution involving a non-Communist affidavit must therefore be whether the affiant acted in good faith or knowingly lied concerning his affiliations, beliefs, support of organizations, etc. And since the constitutional vice in a vague or indefinite statute is the injustice to the accused in placing him on trial for an offense, the nature of which he is given no fair warning, the fact that punishment is restricted to acts done with knowledge that they contra-

vene the statute makes this objection untenable . . ." There is no support for appellant's contention as to the proper contents of the indictment concerning the charge of affiliation in the language quoted, and there is no other language dealing with the question of affiliation in the Douds opinion.

Undoubtedly affiliate is not a precise term with neat boundaries. However, there is no requirement that the Government go further in the indictment.

(c) *The splitting of two acts into six crimes.*

Appellant contends that the indictment was defective in that it took his three acts of filing affidavits in 1951, 1952 and 1953, and made six crimes out of them. The indictment contained a count concerning appellant's statement that he was not a member of the Communist Party and his statement that he was not affiliated with that party for each of the three years. Section 1001 makes criminal the making of "any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry . . ." The crime denounced by section 1001 of title 18, read in the light of section 9(h) of the National Labor Relations Act, is the act of filing a false noncommunist affidavit with the National Labor Relations Board. United States v. Valenti, 207 F. 2d 242, 244 (Cir. 3, 1953).

Appellant contends that the crime here was the filing of an affidavit with any false matter contained in it, and that each false statement contained in a particular affidavit did not create a new and different crime. He points out that he was charged with both membership and affiliation, relationships vis a vis the Communist Party incompatible with one another. He contends that this indicates that

Congress did not intend more than one crime to attach to the filing of one affidavit no matter how many false statements are contained in it.

In a very recent decision, Bell v. United States, 349 U. S. 81 (1955), the Supreme Court stated as follows:

"When Congress has the will, it has no difficulty in expressing it—when it has the will, that is, of defining what it desires to make the unit of prosecution and, more particularly, to make each stick in a faggot a single criminal unit. When Congress leaves to the Judiciary the task of imputing to Congress an undeclared will, the ambiguity should be resolved in favor of lenity."

Doubt should be resolved against turning a single transaction into a multiple offense.

However, appellant was only sentenced to five years on each count to run concurrently. The attack on splitting the cause of action would leave at least one good count for each of the three years. This alone does not justify reversal. See Hirabayshi v. United States, 320 U. S. 81, 85, 105 (1943); Pinkerton v. United States, 328 U. S. 640, 641-642 n. 1 (1946).

II. Exclusion and Admission of Evidence.

Appellant contends that the trial court erred in excluding certain items of evidence offered by him and in admitting certain items offered by the United States.

(a) *Admission of evidence.*

Appellant argues that the trial court improperly admitted testimony of one Harper, and FBI informant who had infiltrated the Communist Party, that he had seen appellant at a closed Communist Party meeting in 1949. Ap-

pellant contends that actions in 1949 are not probative on the issue of whether he was a member or affiliated with the Communist Party in 1951, 1952 and 1953. The Government contends that such evidence in connection with other testimony was probative to circumstantially prove appellant's guilt by showing (1) appellant was a Communist in 1949, (2) it was the policy of the Communist Party thereafter to have labor leaders withdraw and to impose security measures, and (3) appellant acted as a Communist during the critical period of 1951 to 1953. Such a theory of prosecution is permissible. See Hapt v. United States, 330 U. S. 631, 642 (1947); Hupman v. United States, 219 F. 2d 243, 248 (Cir. 6, 1955); Jencks v. United States, 226 F. 2d 540 (Cir. 5, 1955).

Appellant further urges that the trial court erred in allowing the following: Harper testified that he did not recall seeing appellant at a Communist Party meeting after 1949 and then asked if he could explain. The court allowed him to do so. Harper then stated "It is very possible that I have seen Mr. Fisher [the appellant] at other meetings . . ." But that he could not recall such meetings clearly. Appellant labels this as a guess rather than an opinion or a belief.

The United States replies to this by stating that the matter was one for the trial court's discretion and that such discretion was not abused here. See, *e.g.*, United States v. Graham, 102 F. 2d 436, 441 (Cir. 2, 1939); United States v. Stoehr, 100 F. Supp. 143, 154 (M. D. Pa. 1951), affd., 196 F. 2d 276 (Cir. 3, 1952), cert. denied, 344 U. S. 826 (1953). The discretion was not abused. The opinion of Harper properly went to the weight of the testimony, not its admissibility.

(b) *Exclusion of Evidence.*

Appellant sought the production of the records of the Federal Bureau of Investigation to show the receipts prepared by the F. B. I. which were signed by informer Harley Mores for himself and his wife Mazie Mores for moneys paid them by the F. B. I. from 1942 to 1953 amounting to $10,530, $5,780 being paid from 1950 to May 21, 1953.

Mores claimed this large sum was for his and his wife's *expenses* only. As he describes it, it was for money that he was "actually out." That is to say the informer claimed he and his informer wife were so devoted to the interests of justice that he advanced out of his own pocket all these expenses and that they devoted their time and energy for over eleven years in aiding the F. B. I. in its seeking for evidence for prosecutions, without any payment at all for the time they spent and energy they exercised for the benefit of the F. B. I.

It is obvious that if Mores and his wife were such extraordinarily devoted public servants their evidence would have a powerful effect on the jury. Without their evidence Fisher would not have been convicted. In this situation the production of the individual receipts was demanded.

Since if Mores' testimony were true they would have proved the claimed patriotic character of the long service of Mr. and Mrs. Mores, one would expect the Government to have been glad to produce the receipts. Instead it resisted the motion and the court sustained its opposition permitting only the admission of the annual totals. Here the court committed substantial error.

Appellant further argues that the trial court erred in not allowing him to call the United States Attorney trying the case as a witness to impeach the witness Harper. Appellant relies on a statement made by the United States Attorney in an argument on admission of evidence before the trial judge wherein he said that Harley Mores was the only witness "showing Mr. Fisher's implication in this case." Appellant hoped to impeach Harper by the testimony of the United States Attorney that Harper had told him before trial that he could not implicate appellant.

Appellant's quotation from the United States Attorney is taken out of context. He stated that *possibly* Mores was the only one who could implicate appellant, and so he wanted to be allowed to show Communist Party security measures to explain why no one else could do so. Harper only testified that he had seen appellant at a meeting in 1949 and that it was very possible that he had seen him later but that he was not sure. This was a proper exercise of discretion.

Finally appellant urges that the trial court erred in not allowing him to cross examine the witness Harper on his prior false identifications of Communists in Security Board Hearings. The Government contends that all appellant wanted to do was show prior inconsistent statements, and they rely on the rule that a witness cannot be impeached by an inconsistent statement on a collateral matter. Shanahan v. Southern Pacific Co., 188 F. 2d 564 (Cir. 9., 1951).

However, appellant's theory was that Harper had been presented to the jury as an "expert" on Communism, Communist activity and on identification of Communists. He wanted to challenge Harper's expert standing and

show bias in that Harper was paid to produce his testimony. Harper's testimony placing appellant at a closed meeting of the Communist Party in 1949 was a critical part of the Government's case. Great latitude in cross examination should be allowed. We hold the court erred in refusing it. See United States v. Augustine, 189 F. 2d 587, 590-591 (Cir. 3, 1951).

III. The Jury Instructions.

(a) *Application of the perjury corroboration rule.*

Appellant contends that the trial judge erred in failing to give an instruction that the testimony of one witness was insufficient to prove the falsity of the affidavits and that two witnesses or one witness plus independent corroboration were required to convict. The trial court instructed that the jury could find appellant guilty from circumstantial evidence. In short, appellant contends that the perjury corroboration rule should apply to prosecutions under 18 U. S. C. §1001. See Weiler v. United States, 323 U. S. 606 (1942); United States v. Arena, 226 F. 2d 227 (Cir. 9 1955).

There are no cases directly in point. This court refused to apply the perjury corroboration rule to a prosecution under Section 1001 in Todorow v. United States, 173 F. 2d 439 (Cir. 9), cert. denied, 337 U. S. 925 (1949). However that was a case where the defendant was charged with causing another to make a false statement under 18 U. S. C. §2. The falsity of the statement was not in issue. In Hupman v. United States, 219 F. 2d 243 (Cir. 6. 1955), the court allowed a conviction to stand where an instruction similar to the one given in this case was given. However, the Sixth Circuit failed to discuss the question of whether the perjury corroboration rule should be applied to a Section 1001 case.

Appellant relies on Hammer v. United States, 271 U. S. 620 (1926) where the Supreme Court applied the corroboration rule to a prosecution for subornation of perjury.[1] The court stated at page 629:

"The rule that the uncorroborated testimony of one witness is not enough to establish falsity applies in subornation as well as in perjury cases . . . Falsity is as essential in one as in the other. It is the *corpus delicti* in both."

Appellant argues that here and in perjury cases "falsity is as essential in one as in the other." He further contends that the reason behind the rule stated in the Weiler case by the Supreme Court is as applicable to Section 1001 prosecutions as to perjury cases. The corroboration rule is a protection against unfounded prosecutions, and "implicit in its evolution and continued vitality has been the fear that innocent witnesses might be unduly harassed or convicted in perjury prosecutions if a less stringent rule were adopted." Weiler v. United States, supra at 609.

The United States quotes an earlier paragraph in the Weiler opinion which indicates that the policies are not the same in regard to corroboration.

"Lawsuits frequently engender in defeated litigants sharp resentments and hostilities against adverse witnesses, and it is argued, not without persuasiveness, that rules of law must be so fashioned as to protect honest witnesses from hasty and spiteful retaliation in the form of unfound perjury prosecutions." [Emphasis added.]

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[1]This circuit has also so held, Catrino v. United States, 176 F. 2d 884, 888 (Cir. 9, 1949).

The corroboration rule has been greatly criticized on the ground that it is inconsistent to rule that evidence sufficient to warrant the death penalty for murder is insufficient to convict a man of perjury. See, *e.g.*, 7 Wigmore on Evidence §§2040-2041 (3d ed. 1940). This circuit has narrowed the rule in perjury cases to require only evidence of corroboration which convinces the jury that the main witness is telling the truth.

The question is a close one, but the reasons behind the perjury rule do not seem applicable. The trial court did not err.

(b) *The precautionary instruction on secret informers.*

Appellant argues that the trial court erred in not giving an adequate instruction warning the jury about the testimony of paid informers. The trial court gave the following instruction:

"The evidence shows that certain of plaintiff's witnesses were in times past engaged by the government to join the Communist Party and make reports to the Federal Bureau of Investigation of such facts as they learned during such association; also that they were paid considerable sums of money while so engaged. *In weighing the testimony of such witnesses in this case you should scrutinize their testimony with care and caution* and after so considering their testimony give it just such weight as you believe it to be entitled to in view of all the circumstances of the case as disclosed by the evidence. If you find they have testified truthfully such testimony is as good as the truth testified to from any other source." [Emphasis added.]

We think the instruction adequate on the testimony of Mores that the moneys paid him were for expenses only. However, the instruction does not cure the denial of

the production of the receipts which well may have shown that Mr. and Mrs. Mores were paid money *for their long service* in procuring evidence. In that event the instruction should have stated that they had been "paid considerable sums of money while so engaged" but that they also were paid for their services for spying on Fisher. As stated in 3 Wigmore on Evidence, §969:

"One who as a *spy* obtains information of a crime is not necessarily open to discredit thereby; but one who for that purpose . . . has worked for hire in his investigations . . . may under the circumstances be open to the suspicion of bias or interest." See also, Harris v. United States, 169 F. 2d 887 (D. C. Cir., 1948); Steem-Electric Corporation v. Herzfeld-Phillipson Co., 118 F. 2d 122 (Cir. 7, 1940); Hostetter Co. v. Bower, 74 Fed. 235 (C. C. N. Y., 1896).

(c) *The definition of membership and affiliation.*

The trial court gave the following instruction defining "membership" and "affiliation" to the jury as those terms are used in 29 U. S. C. §159(h):

"As used in the indictment and statute the words 'member' and 'affiliated' when applied to the Communist Party have no unusual or different meaning apart from their normal or common usage.

"Webster's New International Dictionary defines 'member' as follows:

" 'One of the persons composing a society, community, or party; an individual who belongs to an association.'

" 'Affiliate' is defined as follows:

" 'To connect or associate one's self with; to adopt, hence usually to bring or receive into close connection; to ally.' "

The appellant contends that both parts of the instruction are erroneous. His proposed instruction stated the formal requirements for *membership* in the Communist Party, applying and being accepted, accepting the principles of the Party, acting for the Party and paying dues and attending Party meetings.

Membership is composed of a desire on the part of the person in question to belong to an organization and acceptance by the organization. Moreover, certain actions are usually required such as paying dues, attending meetings and doing some of the work of the group. These were the factors mentioned in the Supreme Court's opinion in Galvan v. Press, 347 U. S. 522, 528-529 (1954) where the court considered whether the evidence justified the conclusion that a certain person was a member of the Communist Party. Congress in the Communist Control Act of 1954 indicates twelve types of evidence which a jury may consider to determine the question of membership. 50 U. S. C. §844. Analyzed carefully they break down into acts of the individual indicating a desire to belong, acts of acceptance by the organization, and various contributions of funds or services to the organization.[2]

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[2]It should be recognized that both the opinion of the United States Supreme Court in Galvan v. Press, 347 U. S. 522 (1954), and the Communist Control Act of 1954, 50 U. S. C. A. §844 (1955 Supp.), were handed down and enacted several years after the passage of Section 9(h) of the Labor Management Relations Act of 1947, 29 U. S. C. A. §159(h) (1955 Supp.), and neither deals directly with the question of the proper instruction to a jury in a prosecution for filing a false non-Communist affidavit. However, they are indications of what the Supreme Court and the Congress believe to be the components of the often used phrase "member of the Communist Party."

The dictionary definition read to the jury by the trial court defined "membership" in terms of its synonyms rather than breaking it down into its component elements. The issue thus is whether this is error. The Government contends that "membership in an organization is one of the most common and frequently exercised privileges of an American citizen, and it is doubtful if there is any juror who does not understand the acts which constitute membership in an organization." Under 29 U. S. C. §159(h) and 18 U. S. C. §1001, "punishment is restricted to acts done with knowledge that they contravene the statute" and "'no honest, untainted interpretation . . . is punishable" American Communications Association v. Douds, 339 U. S. 382, 413, (1950). Appellant contends that he might honestly state he was not a member if he had failed to comply with any of the Party's formal requirements for membership as stated in its Constitution. The Government does not answer this contention in their brief. The jury should have been reminded of the components of the term membership rather than be supplied with synonyms. The instruction was erroneous.

Appellant also contends that the instruction concerning affiliation was too vague. The trial court defined it as follows: "To connect or associate one's self with; to adopt, hence usually to bring or receive into close connection; to ally." The Supreme Court considered the meaning of the phrase "affiliated with the Communist Party" at some length in Bridges v. Wixon, 326 U. S. 135 (1945). The Court quoted with approval the following from United States v. Reimer, 79 F. 2d 315, 317 (Cir. 2, 1935):

"Affiliation includes an element of dependability upon which the organization can rely which, though not equiva-

lent to membership duty, does rest upon a course of conduct that could not be abruptly ended without giving at least reasonable cause for the charge of a breach of good faith."

The Court itself stated:

"[Affiliation] . . . imports . . . . less than membership but more than sympathy . . .

"Whether intermittent or repeated, the act or acts tending to prove 'affiliation' must be of that quality which indicates an adherence to or a furtherance of the purposes or objectives of the proscribed organization as distinguished from mere cooperation with it in lawful activities. The act or acts must evidence a working alliance to bring the program to fruition."

The question is whether the definition given by the trial judge was sufficient to get across to the jury the idea of a continuing reciprocal relationship involving duties and responsibilities. The proper test to apply is whether one could be convicted under the instruction which was given who was only in sympathy with the aims of the Communist Party, and who occasionally would, say distribute literature for it but without any obligation to do so or to continue to do so. He would have connected or associated himself with the Communist Party. He would be its ally. One who was in sympathy with the aims of the Communist Party might be an undesirable person to have as a labor leader since he might agree to call a political strike to further that Party's revolutionary ends. However, under the test of affiliation laid down in Bridges v. Wixon he could honestly answer that he was not affiliated with the Communist Party. If the test of affiliation given in that case is still applicable, and unless the Government can distinguish the case, this instruction is erroneous.

IV. The Evidence.

Appellant contends that his conviction was not justified by the evidence. The evidence taken most strongly for the Government, Glasser v. United States, 315 U. S. 60, 80, is as follows: Appellant attended an important meeting of Communist Party leaders in 1949 which was closed to non-members. Both the witnesses Mores and Harper testified to this. Appellant collected Mores' party dues in September of 1950 and asked him what the Party policy on Section 159(h) affidavits was. He was not seen in Party circles from 1950 to 1952. However, during this time the Communist Party policy was that labor leaders subject to such affidavits could destroy Party cards and neither attend meetings nor pay dues. Local groups were to destroy lists with the names of union leaders on them. Only two or three people knew which union leaders were Communists. Mores testified that in 1952 he met appellant at a meeting where it was announced that appellant was the new organizer for a certain district and in charge of collecting dues. At a later meeting appellant gave Mores literature and a reading list of Communist documents. Mores saw appellant at two later meetings wherein appellant played a significant role as a leader.

Thus the Government's case was that appellant was a member of the Communist Party or affiliated therewith both before and after 1951 and 1952, the years in which he executed and filed non-Communist affidavits. (Appellant was acquitted on the counts concerning 1953. During those two years it was Communist Party policy for union leaders to drop their overt connections with the Party. The case circumstantially proves membership or at least affiliation at the time the affidavits were executed since

the jury was free to draw the obvious inference that appellant continued his Party connections.

Appellant points to discrepancies in the testimony of Mores. Mores on cross examination was not a good witness, often answering "I don't know" and evading questions. However, this is a question of credibility for the jury. Mores' knowledge that the meetings were closed to all but Communists was attacked as hearsay but appellant's brief does not spell out why or how his knowledge was hearsay. The record does not supply this gap. Mores and Harper placed the 1940 meeting a year apart, one stating it was in December of 1949, the other in January of 1949. However, the jury was free to accept the obvious explanation of the common mistake about the year in which something occurred when the transaction took place in either December or the following January. We think the evidence sustains the verdict.

Because of the errors in excluding evidence and in the instructions the judgment is reversed.

(Endorsed:) Opinion. Filed Feb. 15, 1956. Paul P. O'Brien, Clerk.

Excerpts From the Decision of the Court of Appeals for the Seventh Circuit in United States v. Lightfoot:

In the United States Court of Appeals for the Seventh Circuit.

No. 11470. October Term, 1955—January Session, 1956.

The United States of America, Plaintiff-Appellee, v. Claude Mack Lightfoot, Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

January 12, 1956.

Before DUFFY, *Chief Judge*, and LINDLEY and SWAIM, *Circuit Judges*.

DUFFY, *Chief Judge*. Defendant was convicted after a jury trial on a one count indictment which charged violation of the "membership" clause of Section 2 of the Smith Act. 54 Stat. 671, 18 U. S. C. §2385.[1] . . .

Defendant claims the trial court erred in refusing to order the production of a report made to the FBI by the witness Brzek who was a member of the Communist Party from 1943 to 1947. In the latter year Brzek attended classes taught by defendant Lightfoot at a Communist School conducted in Ivanhoe, Wisconsin. It was at one of these classes Brzek testified that defendant stated: "If we have to shed blood, we will." On cross-examination Brzek testified he had made a report with reference to said classes to the Milwaukee office of the FBI. The report thus made was not in the courtroom, nor did the witness use a copy thereof to refresh his memory. The motion to produce was made after the Government had

closed its case. Defendant offered no oral testimony. On his claim of error, defendant relies principally upon Gordon *et al.* v. United States, 344 U. S. 414.

In Gordon the Court said, pages 418-19: "By proper cross-examination, defense counsel laid a foundation for his demand by showing that the documents were in existence, were in possession of the Government, were made by the Government's witness under examination, were contradictory of his present testimony, and that the contradiction was as to relevant, important and material matters which directly bore on the main issue being tried: * * *."

In the case at bar nothing was developed on cross-examination to the effect that the report to the FBI conflicted with the direct testimony of Brzek. Thus an essential element of the rule stated in Gordon was not here present. No proper foundation was laid for the production of the report, and the trial court was correct in denying the motion to produce. The United States of America v. Echeles, 7 Cir., 222 F. 2d 144, 152-153; Starr v. Commissioner of Internal Revenue, 7 Cir., 226 F. 2d 721, 724; Jencks v. United States of America, 5 Cir., 226 F. 2d 540, 553; Jencks v. United States of America, 5 Cir., 226 F. 2d 553, 560-561.

Furthermore, we think that the District Court, under the rule stated in Goldman v. United States, 316 U. S. 129, 132, properly denied the defendant's motions. The Court, in that case, used this language:

"We think it is the better rule that where a witness does not use his notes or memoranda in court, a party has no absolute right to have them produced and to inspect them. Where, as here, they are not only the witness' notes but

are also a part of the Government's files, a large discretion must be allowed the trial judge. We are unwilling to hold that the discretion was abused in this case."

To the same effect: Iva Ikuko Toguri D'Aquino v. United States, 9 Cir., 192 F. 2d 338, 375; Imperatore v. United States, 2 Cir., 193 F. 2d 409, 410; Neal v. United States, 5 Cir., 203 F. 2d 111, 118; United States v. Mesarosh, *et al.*, D. C. W. D. Pa., 116 F. Supp. 345, 349, 350.

SUBJECT INDEX.

PAGE

Opinions below 1

Jurisdiction 1

Questions presented 2

Statutes involved 4

Statement of the case 5

Evidence dealing with the issues of membership in and affiliation with the Communist Party 6

(a) The pre-affidavit period: April, 1946, to August, 1949 6

(b) The post affidavit period 11

Denial of access to informer reports to F.B.I. made by the witnesses Matusow and Ford contemporaneously with the events and transactions covered in their testimony 14

Instructions 16

1. Membership 16
2. Affiliation 16
3. Findings jury was to make 17
4. Credibility of informers 17

Proceedings on the motion for new trial 17

The evidence on the motion for new trial 18

Denial of access to F.B.I. reports by Matusow at the hearing on the motion for new trial 21

Summary of argument 22

Argument 25

Point One. The court below erred in affirming the ruling of the trial court, which denied petitioner's request for an order requiring the government to product the F.B.I. reports to the court for its determination as to relevance and making available to petitioner such reports as were relevant 25

PAGE

(a) Petitioner's request, at the trial, with reference to Matusow's reports to the F.B.I. which he was employed to make and did make contemporaneously with the transactions covered in his direct testimony..... 25

(b) Petitioner's request, at the hearing on the motion for new trial, with reference to the same reports..... 33

(c) Petitioner's request, at the hearing, for the record of Matusow's interview with the F.B.I. agent at Santa Fe 39

(d) Petitioner's request, at the trial, with reference to Ford's reports to the F.B.I., which he was employed to make, and did make, contemporaneously with the transactions covered in his direct testimony..... 42

Point Two. The court below erred in approving the District Court's charge to the jury as well as its refusals to charge on the issue of membership..... 44

(a) The charge was an abdication by the trial court of its responsibility to guide the jury by appropriate legal criteria 44

(b) The charge permitted the jury t nd membership solely on the basis of the pre-affidavit evidence and was therefore in conflict with this court's construction of the statute in American Communications Assn. v. Douds, 339 U. S. 382, 413-414. It violated the presumption of innocence and permitted drawing from innocent prior membership an arbitrary inference of continued membership having criminal consequences..... 55

(c) The statute as applied in the instruction on membership was rendered so vague, indefinite and uncertain as to afford no ascertainable standard of guilt, and to embrace speech and association protected by the First Amendment 60

(d) The instruction was vague and misleading in connection with the requirement that the jury determine and confine its judgment to, the accused's meaning of the critical word member 65

PAGE

Point Three. The court below erred in approving the rulings of the trial court concerning instructions on the issue of affiliation 69

(a) The trial court gave the jury no legal guide on the issue of affiliation 69

(b) To the extent that the charge contained any criteria of affiliation, they were in conflict with those defined by this court in Bridges v. Wixon, 326 U. S. 135 71

(c) The instruction permitted the jury to find affiliation solely on the basis of the pre-affidavit evidence and was therefore in conflict with this court's construction of the statute in the Douds case, 339 U. S. 382, 413-414 75

(d) The instruction failed to require the jury to determine and limit its finding to petitioner's meaning of the critical word affiliate 76

Point Four. The court below erred in affirming the refusal of the trial court to instruct the jury, as requested, to approach the testimony of the paid F.B.I. informants herein with caution and to weigh it with great care 77

Conclusion 88

Appendices:

I. Comparison of Matusow testimony at the trial of Jencks and in his recantation thereof ..... App. p. 1

II. Summary of evidence adduced at hearing on motion for new trial, arranged in chronological order ..... App. p. 17

III. Opinion of Judge Bazelon in Gold v. United States (C. A., D. C.), No. 12352, opinion filed April 19, 1956 ..... App. p. 39

TABLE OF AUTHORITIES CITED

Cases	Page
American Communications Assn. v. Douds, 339 U. S. 382	3, 23, 27, 42, 45, 55, 63, 64, 65, 73, 74, 78, 79
Andres v. United States, 333 U. S. 740	53
Arnold v. United States, 94 F. 2d 499	83
Beaty v. United States, 203 F. 2d 652	34
Bihn v. United States, 328 U. S. 633	54
Bird v. United States, 180 U. S. 356	52
Bollenbach v. United States, 326 U. S. 607	52, 54, 70
Bowman Dairy Co. v. United States, 341 U. S. 214	29
Bridges v. United States, 199 F. 2d 811	49, 51
Bridges v. Wixon, 326 U. S. 135	3, 24, 64, 74, 75, 76
Bruno v. United States, 308 U. S. 287	52
Chapman v. American Legion, 244 Ala. 553, 14 So. 2d 225	45
Cleveland C. C. & St. L. R. Co. v. Starks, 58 Ind. 341, 106 N. E. 646	58
Colyer v. Skeffington, 265 Fed. 17	79
Communist Party v. Subversive Activities Control Board, 351 U. S. 115	31, 35, 84, 87
Connolly v. General Constr. Co., 269 U. S. 385	60
Cratty v. United States, 163 F. 2d 844	82
DeJonge v. Oregon, 299 U. S. 353	63
Di Carlo v. United States, 6 F. 2d 364	34
District of Columbia v. Clawans, 300 U. S. 617	82
Ellicott v. Pearl, 35 U. S. (10 Pet.) 412	34
Fisher v. United States, 231 F. 2d 99	27, 28, 30, 32, 44, 61, 66, 72, 82
Fiswick v. United States, 329 U. S. 211	78
Fletcher v. United States, 158 F. 2d 321	82
Fotie v. United States, 137 F. 2d 831	66
Freed v. United States, 266 Fed. 1014	82

PAGE

Gelbin v. N. Y., N. H. & H. R.R. Co., 62 F. 2d 500 34
Gold v. United States, No. 12352 66
Goldman v. United States, 316 U. S. 129, 226 F. 2d 552, n. 19 .. 29
Gordon v. United States, 178 F. 2d 896 ..... 35, 41
Gordon v. United States, 344 U. S. 414 ..... 22, 26, 29, 31, 35
Hague v. C.I.O., 307 U. S. 496 63
Haywood v. United States, 268 Fed. 795 58
Herndon v. Lowry, 301 U. S. 242 ..... 53, 60, 75
Herron v. Southern Pacific Co., 283 U. S. 91 53
Hilliard v. United States, 24 F. 2d 99 66
Hostetter Co. v. Bower, 74 Fed. 235 82
Hupman v. United States, 219 F. 2d 243 56
Inland Steel Co. v. National Labor Relations Board, 170 F. 2d 247 74
Interstate Circuit v. United States, 306 U. S. 208 36
Johns v. United States, 227 F. 2d 374 82
Kammann v. United States, 259 Fed. 192 58
Kotteakos v. United States, 328 U. S. 750 ..... 54, 87
Kubilius v. Hawes, 322 Mass. 638, 79 N. E. 2d 5 45
Lanzetta v. New Jersey, 306 U. S. 451 46
Larrison v. United States, 24 F. 2d 82 35
Lett v. United States, 15 F. 2d 686 82
Luse v. United States, 49 F. 2d 241 66
M. Kraus and Bros. v. United States, 327 U. S. 614 54
Maggio v. Zeitz, 333 U. S. 56 57
Martin v. United States, 17 F. 2d 973 35
McNabb v. United States, 318 U. S. 332 ..... 84, 86, 87
Mooney v. Holohan, 294 U. S. 103 40
Morrison v. California, 291 U. S. 82 59
Musser v. Utah, 333 U. S. 95 53
Nudd v. Burrows, 91 U. S. 426 52

PAGE

People v. Davis, 52 Mich. 569, 18 N. W. 362 30
Quercia v. United States, 289 U. S. 466 53
Schneiderman v. United States, 320 U. S. 118 76
Screws v. United States, 325 U. S. 91 54
Seymour v. United States, 77 F. 2d 577 66
Shelton v. United States, 205 F. 2d 806 41
Smith v. Kern County Medical Assn., 19 Cal. 2d 263, 120 P. 2d 874 45
Sparf v. United States, 156 U. S. 51 ..... 53, 54
Stromberg v. California, 283 U. S. 359 ..... 63, 75
Terminiello v. Chicago, 337 U. S. 1 ..... 54, 63
Thomas v. Collins, 323 U. S. 516 63
Thornhill v. Alabama, 310 U. S. 88 75
Tot v. United States, 319 U. S. 463 ..... 59, 60
Traders Mutual Life Ins. Co. v. Humphrey, 109 Ill. App. 246 45
United Brotherhood of Carpenters v. United States, 330 U. S. 395 ..... 54, 56
United States v. Andolschek, 142 F. 2d 503 ..... 27, 30
United States v. Beekman, 155 F. 2d 580 ..... 27, 30
United States v. Cardiff, 344 U. S. 174 54
United States v. C.I.O., 335 U. S. 106 63
United States v. Cohen, 145 F. 2d 82 ..... 27, 28
United States v. Cohen Grocery Co., 255 U. S. 81 60
United States v. Coplon, 185 F. 2d 629 30
United States v. Dennis, 183 F. 2d 201; aff'd, 341 U. S. 494 57
United States v. Flynn, 130 Fed. Supp. 412 ..... 18, 20, 36, 84
United States v. Flynn, et al., 216 F. 2d 354; cert. den., 348 U. S. 909 ..... 14, 18, 36
United States v. Holton, 222 F. 2d 840 49
United States v. Johnson, 327 U. S. 106 35
United States v. Krulewitch, 145 F. 2d 76 ..... 27, 28, 30

PAGE

United States v. Mesarosh, 116 Fed. Supp. 345 30
United States v. Reimer, 79 F. 2d 315 44
United States v. Remington, 191 F. 2d 246; cert. den., 343 U. S. 907 66
United States v. Ross, 92 U. S. 281 81
United States v. Schneiderman, 106 Fed. Supp. 731 ..... 28, 30
Weiler v. United States, 323 U. S. 606 54
White v. Ragen, 324 U. S. 760 40
Wieman v. Updegraf, 344 U. S. 183 ..... 63, 64, 76
Winters v. New York, 333 U. S. 507 ..... 63, 75
Wolf v. United States, 259 Fed. 388 58

MISCELLANEOUS

Chafee, The Blessings of Liberty (1956), pp. 95-97 ..... 79, 80
Chafee, The Blessings of Liberty (1956), p. 243 46
Chafee (1941), Free Speech in the United States, pp. 215-218, 277-280, 489-490 ..... 79, 86
100 Congressional Record, p. 14849 47
100 Congressional Record, pp. 14849, 15237 47
100 Congressional Record, p. 15112 47
1 Commons (1918), History of Labor in the United States, p. 403 79
2 Commons (1918), History of Labor in the United States, pp. 195-197, 337, 339, 415-416 79
2 Constitutional History of England (1880), pp. 275-276 ..... 79, 86
Ecclesiasticus XXI, p. 31 86
Guide to Subversive Organizations and Publications (1951), p. 5 47
Hand, L. (1953), The Spirit of Liberty, p. 284 85
Hearings, Feb. 22, 1955, 84th Cong., 1st Sess. 18
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PAGE

Miller (1951), Crisis in Freedom, p. 53 86
New York Times (July 8, 1954), Editorial 85
New York Times (Feb. 1, 1955), Anti-Red Witness Confesses He Lied 84
New York Times (Feb. 5, 1955), Editorial 84
New York Times (Feb. 16, 1955), Matusow Admits Faking Blacklist 84
New York Times (Feb. 17, 1955), Motusow Heard on Oxnam Views 84
New York Times (Feb. 18, 1955), Matusow Study Widened by U. S. 84
New York Times (Mar. 3, 1955), Matusow Admits Lies Against 244 84
New York Times (Aug. 12, 1956) 85
Senate Resolution No. 58 (1955), 84th Cong., 1st Sess. 84
23 University of Chicago Law Review, pp. 173, 182, n. 28 47
41 Virginia Law Review (1955), Jefferson and the Bill of Rights, pp. 709, 721 83
Webster's International Dictionary (2d Ed.) 71, 77
2 Wharton, Criminal Evidence (11th Ed.), Sec. 922, p. 1604 .. 78
2 Wharton's Criminal Law (12th Ed.), pp. 1782, 1786 67
3 Wigmore, Evidence (3d Ed.), Sec. 738, p. 76 27
3 Wigmore, Evidence (3d Ed.), Sec. 1042, p. 733 ..... 27, 32
4 Wigmore, Evidence (3d Ed.), Sec. 1056, p. 17 ..... 31, 81
4 Wigmore, Evidence (3d Ed.), Sec. 1128, pp. 203-207 34
4 Wigmore, Evidence (3d Ed.), Sec. 1129, pp. 203-207 34
7 Wigmore, Evidence (3d Ed.), Sec. 2094, pp. 466-477 31
64 Yale Law Journal, pp. 712, 750 47
60 Yale Law Journal (1951), Donnelly, R. C., Judicial Control of Informants, Spies, Stool Pigeons, and Agent Provocateurs, pp. 1091, 1121, 1122, 1126 ..... 79, 82, 83

RULES

PAGE

Federal Rules of Criminal Procedure, Rule 33 17

STATUTES

Communist Control Act of 1954 (Act of Aug. 24, 1954), Chap. 886 47

68 Statutes at Large p. 775 47

United States Code, Title 18, Sec. 1001 ..... 4, 5, 56, 60, 65, 66

United States Code, Title 18, Sec. 1621 65

United States Code, Title 28, Sec. 1254(1) 1

United States Code Annotated, Title 29, Sec. 159(h) 4, 5, 6, 16, 60

United States Code Annotated, Title 50, Sec. 841 47

United States Code Annotated, Title 50, Sec. 844 47

United States Constitution, Art. I, Sec. 9, Clause 3 5

United States Constitution, First Amendment 5, 71, 75

United States Constitution, Fifth Amendment 5, 71

United States Constitution, Sixth Amendment 5

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 23

CLINTON E. JENCKS,

Petitioner,

vs.

UNITED STATES OF AMERICA.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

BRIEF FOR THE PETITIONER.

Opinions Below.

The opinion of the Court of Appeals affirming the judgment of conviction of the District Court is reported at 226 F. 2d 540. The opinion of the Court of Appeals affirming the order of the District Court denying petitioner's motion for new trial upon the ground of newly discovered evidence is reported at 226 F. 2d 553.

Jurisdiction.

The judgments of the Court of Appeals were entered October 26, 1955. Timely petitions for rehearing were denied on December 1, 1955. [R. 522, H. 847.][1] Petition for certiorari was filed December 28, 1955, and granted March 5, 1956. 350 U. S. 980.

The jurisdiction of this Court is invoked under 28 U. S. C., section 1254(1).

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[1]The trial record will be referred to as "R. ____". The record on the hearing of the motion for new trial as "H. ____". They are separately printed and paginated.

Questions Presented.

1. Whether on the cross-examination of a key government witness, who had been employed by the F.B.I. as an informer, the trial court on application should require the Government to produce to it the witness' contemporaneous reports to the F.B.I. concerning the transactions covered in his direct testimony and make available to the accused so much of those reports as are relevant for impeachment of the witness.

2. Whether, when a witness described as above fully recants his trial testimony and testifies in support of a motion for new trial and his recantation is attacked on cross-examination as a recent fabrication corruptly induced, the trial court should on application require the Government to produce to it the same reports and make available to the accused so much of those reports as are relevant to the truth of the recantation and the rehabilitation of the witness.

3. Whether under the circumstances described in question two the trial court should on application require the Government to produce to it a statement dictated by the witness to an F.B.I. agent before the trial to the effect that he did not believe his grand jury testimony herein to be honest and make available to the defendant so much of that statement as is relevant to the rehabilitation of the witness.

4. Whether the trial court's instruction on the issue of membership,

(a) failed to provide the jury with any legal yardstick against which to appraise the evidence, thus denying petitioner due process of law, invading the legislative power of the Congress and depriving petitioner of a jury trial;

(b) permitted the jury to make a finding of membership in the Communist Party as of April 28, 1950, solely upon evidence of membership long in advance of that date, contrary to the decision of this Court in *American Communications Assn. v. Douds*, 339 U. S. 382, and failed to advise the jury of limitations upon criminal liability under the statue involved;

(c) applied the statute in such a way that it afforded no ascertainable standard of guilt and abridged First Amendment liberties.

5. Whether the trial court's instructions on the issue of affiliation,

(a) defined affiliation in a manner contrary to that decided by this Court in *Bridges v. Wixon*, 326 U. S. 135;

(b) provided the jury with a wholly confusing and misleading charge and failed to furnish it a useable legal yardstick thus denying petitioner due process of law, invading the legislative power of the Congress and depriving petitioner of a jury trial;

(c) applied the statute in such a way that it afforded no ascertainable standard of guilt and abridged First Amendment liberties.

6. Whether the trial court at the request of the accused should instruct the jury that the testimony of witnesses who had been employed by the F.B.I. as informers posing as members of the Communist Party, and in that capacity had participated in the transactions with the accused covered in their testimony, should be approached with caution and weighed with great care.

Statutes Involved.

1. 29 U. S. C. A., section 159(h):

"(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section; and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 160 of this title, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35A of the Criminal Code shall be applicable in respect to such affidavits." July 5, 1935, c. 372, §9, 49 Stat. 453; June 23, 1947, 3:17 p.m., E.D.T., c. 120, Title I, §101, 61 Stat. 143; Oct. 22, 1951, c. 534, §1(c. d), 65 Stat. 601.

2. 18 U. S. C., section 1001:

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both." June 25, 1948, c. 645, 62 Stat. 749.

The pertinent provisions of the Constitution involved are:

1. *The First Amendment:*

"Congress shall make no law . . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble . . . ."

2. *The Fifth Amendment:*

"No person shall . . . . be deprived of life, liberty, or property, without due process of law . . ."

3. *The Sixth Amendment:*

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . . to have compulsory process for obtaining witnesses in his favor . . ."

4. *Article I, Section 9, Clause 3:*

"No Bill of Attainder or *ex post facto* Law shall be passed."

Statement of the Case.

Petitioner was charged and found guilty in two counts of filing with the National Labor Relations Board a false affidavit of non-Communist union officer contrary to 18 U. S. C., section 1001, and 29 U. S. C.A., section 159(h). He was sentenced to a term of five years' imprisonment on each count, the sentences to run concurrently.

The indictment [R. 1] was filed April 20, 1953. It alleged that on April 28, 1950, the defendant made and filed the affidavit and that he knew it contained a false denial of membership in the Communist Part (count one) and a false denial of affiliation with that Party (count two). The affidavit [G-1, R. 383] was purportedly exe-

cuted and filed in connection with an effort by Local 890, International Union of Mine, Mill & Smelter Workers[2] to comply with the requirements of 29 U. S. C. A., section 159(h). All issues concerning the making and filing of the affidavit have been determined adversely to petitioner by the jury's verdict.

Evidence Dealing With the Issues of Membership in and Affiliation With the Communist Party.

(a) The Pre-Affidavit Period: April, 1946, to August, 1949.

CURRIE: Testified to a "closed Communist Party meeting" of veterans at the home of Arthur Barry, Chairman of the Communist Party of Colorado, in April, 1946. This meeting occurred four years before the affidavit. All persons present were "known" to the witness to be members of the Communist Party. Barry gave a "report" urging veterans to join veterans organizations "in order to further the aims of the Communist Party." Jencks said there were too many Communist Party members in American Veterans Committee and they should "spread themselves into other veterans organizations." He said that veterans faced problems all over the country which could be met only by the activity of Communist Party members in raising them before the membership of veterans organizations. [R. 86-89.]

FORD: Testified to five Communist Party meetings as follows:

(a) *Albuquerque*, August, 1948—one year and nine months before the affidavit. Held at home of Joseph DeSanti, chairman of Albuquerque City Branch of the Communist Party, as part of the 1948 election campaign

---

[2]The Internatoinal Union is herein called Mine-Mill.

of the Progressive Party. All persons present were "known" as members of Communist Party. Jencks told of his plans to further his candidacy for Congress, saying he would do all in his power to further the cause of the Progressive Party and would concentrate on getting out the vote. [R. 100-101.]

(b) *Santa Fe,* February, 1949—one year and two months before the affidavit. Called and presided over by DeSanti. He said there was to be a meeting of a Mexican-American Association and he wanted delegates chosen for it. All those chosen, including Jencks, were "known" to the witness as Communist Party members. [R. 101-102.]

(c) *Hot Springs,* April, 1949—one year before the affidavit. The witness said Jencks was then in charge of the southern area of New Mexico for the Communist Party. This meeting was called by DeSanti to complete the organization of the Communist Party in New Mexico. Jencks was given responsibility for labor, while others were asked to carry out the Party's interest in such fields as civil rights, Progressive Party, Mexican-American work. Jencks said he would do all in his power to support the organization, would concentrate on recruiting workers and would get greater financial support for the Party. He was made a member of its State Board. [R. 104-107.]

(d) *Albuquerque,* May, 1949—eleven months before the affidavit. Jencks reported on his labor work, saying that he was recruiting among labor and avoiding an earlier mistake by concentrating on quality of members, that he was going to see that members were indoctrinated in Marxism-Leninism, that the union newspaper would be open to support the Communist Party on issues concerning it, and that he would share his responsibilities with Arthur Flores. [R. 108-109.]

(e) *Santa Fe,* July or August, 1949—eight or nine months before the affidavit. Called by DeSanti in preparation for a meeting of the Mexican-American Association at Albuquerque. DeSanti said that the Communist Party leaders should do all in their power to support that meeting and cautioned them to "take the background and not be too conspicuous." [R. 109-110.] All persons present were "known" to the witness as members of the Communist Party. [R. 113.]

In addition Ford testified that he and Jencks attended the meeting of the Mexican-American Association just referred to. Jencks' wife spoke there in opposition to a proposed resolution that would have required the organization to disavow Communist support, saying that the resolution would deter the organization from its main purpose of fighting discrimination against Mexican-Americans in the Southwest. [R. 113.]

Finally the witness said that he was one of the security officers for the Communist Party in New Mexico during 1949. As such he dealt with defections and discipline of Party members. In that time no disciplinary action was taken against Jencks in the latter's presence. [R. 115, 119.] During the period "starting in 1949 and up to September in 1950" Jencks was not "replaced in his position on the State Board." [R. 133.]

BROOKS: Conversation on Brooks' front porch in Hanover, New Mexico, in May, 1947—nearly three years before the affidavit. Jencks said he couldn't think of anything more admirable in a child than loyalty to his mother. Someone else said he disagreed, contending that a child should be taught to respect the laws of his country and his creator equally as much. Jencks dismissed this as "foolishness," and Brooks commented that Jencks' re-

marks sounded like "Communist beliefs." Jencks retorted that "he was a Communist and proud of it." [R. 200-201.]

KNOTT: Meeting at Bayard, New Mexico, "in the latter part of 1946"—nearly three and one-half years before the affidavit.

Knott is a former member of the Communist Party and one-time representative of Mine-Mill. He traveled to Bayard and met with an officer of Mine-Mill, the Communist Party organizer for Arizona and Southern New Mexico, and Jencks. At that time Jencks had just been assigned to the area as a representative of Mine-Mill. There was discussed the "organization situation" in the area. It covered putting "a solid Communist Party group" in each of the local unions, getting out a monthly bulletin to raise the educational level and consciousness of the workers, amalgamating the local unions into one large union for closer control and supervision, and the method for paying dues to the Communist Party. [R. 207-210.]

PETERSON: The witness in 1947 and 1948 was a representative of Mine-Mill and a member of the Communist Party. [R. 212-213.] He testified to three so-called "Communist meetings" as follows:

(a) *Salt Lake City*, May or June, 1947—almost three years before the affidavit. After cross-examination, the witness changed that date to February 16, 1948, over two years before the oath. [See for original date, R. 213-215.][3] This meeting was held at the Hotel Utah during the pendency of a Mine-Mill conference and was attended

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[3]The testimony on cross-examination was not printed.

only by Mine-Mill personnel who were "known" also to be members of the Communist Party. There was discussed the conflict within Mine-Mill between the "left" and the "right," disaffection problems within the union and opposition to the then pending Taft-Hartley bill. Jencks spoke in favor of fighting that legislation, especially the non-Communist affidavit provisions. [R. 213-219.]

(b) *Denver*, late 1947 or early 1948—over two years before the affidavit. This was a Rocky Mountain Convention of the Communist Party. Peterson and Jencks were put on a committee apparently created to promote the interests of Mexican-American people. The chairman of the convention, Arthur Barry, spoke of government encroachments on civil liberties and the duty of Communist Party members to resist these tendencies. [R. 219-224.]

(c) *Denver*, May or June, 1948—nearly two years before the affidavit. This was held in a Denver hotel room at the time of a Mine-Mill conference and was attended solely by union personnel. There was discussed secession movements in the union, the Progressive Party movement and the union position not to sign the non-communist affidavits prescribed in the Taft-Hartley Act. Jencks spoke, saying he had no fear of secession in the New Mexico area. [R. 224-227.]

ECKERT: In 1947 and 1948 this witness was, he says, a member of Mine-Mill and one of the four-man steering committee of the Communist Party in Mine-Mill. He claims he attended two "Communist Party meetings" with Jencks as follows:

(a) *Chicago*, August, 1947—two years and eight months before the affidavit. This meeting "was restricted

to members of the Communist Party" and consisted of Mine-Mill personnel plus the Communist Party State Secretary and Trade Union Secretary for Illinois. There was discussed the rival candidacies of two persons for an office in Mine-Mill. Jencks spoke in favor of one because he would carry out the instructions of the Communist Party. [R. 328-332.]

(b) *St. Paul*, August, 1947—two years and eight months before the affidavit. This was a "Communist meeting." Attending were Mine-Mill personnel and "a representative of the Communist Party from New York." Jencks reiterated his support for one of the contesting candidates but no statement of reasons was attributed to Jencks for this occasion. [R. 332-334.]

THOMPSON: This witness was formerly the printer for the publication of Local 890 called the "Union Worker." He said Jencks was the editor of it in October, 1949. He identified the edition printed in that month [G. 24] containing an editorial referring to the Taft-Hartley Act non-communist affidavit in which this sentence appears, "Now that our Union has signed the phony affidavits we can defend ourselves on a ballot in case of raids." [R. 372-373, 375.] In October, 1949, according to the evidence, the only "affidavit" signed by Jencks was the one dated October 15, 1949. [G. 7; R. 395.] Later the prosecutor argued that this was an admission that the 1949 affidavit was false. [R. 453.]

(b) The Post Affidavit Period.

TERRAZAS: This witness was a former member of Jencks' local. He testified to these things:

(a) During the years 1950, 1951 and 1952, Jencks stated to union meetings that everyone should buy a news-

paper called the Daily People's World, that this was the only paper that brought out the truth to the people, unlike other papers which were controlled by capitalists. [R. 348.] According to Matusow this was a "West Coast Communist Party newspaper." [R. 247.]

(b) That Terrazas was expelled from Local 890 because he fought against "Communism on the job and such as trying to walk out for nothing, things like that," and for this he was assailed for "attacking Mine-Mill." [R. 371.]

MATUSOW: This witness testified to four conversations with Jencks at a guest ranch in San Cristobal Valley, New Mexico. They all occurred in the period late July or early August, 1950—some three months after the affidavit.

(a) *The conversation with Jencks and Marcus* July 15, to 20, 1950—Matusow, Jencks and one Marcus were unloading books from Matusow's car, and while doing so they discussed the Community Party. Matusow said he had left New York permanently and was thinking of living either in New Mexico or California, adding that he would transfer his Communist Party membership to either of those places. Jencks' reply was, "It is a good idea, we can use more active Communists out here." [R. 244-246.]

(b) *The conversation about "Do-Day" and the Korean War*—Jencks again expressed approval of Matusow's proposed transfer to New Mexico, saying, "we can use you out here, we need more active Party members." Jencks asked Matusow what he and other Communists had done in New York in relation to the Stockholm Peace Appeal. Matusow told of efforts to get signatures on peace petitions and to raise money in street meetings and canvassing neighborhoods. He described a "Do-Day" which was

one day a week set aside for activities rather than meetings; Jencks replied that this was a good idea and he would bring it back to some of his "fellow Party members in Silver City." In response to Matusow's request for information as to what "he and other Communists" were doing about the Peace Appeal, Jencks told of conferences with leaders of the Mexican Miners Union to get common expiration dates on collective bargaining contracts in the United States and Mexico so as to cut off production or slow it down for the Korean War effort. [R. 245-246.]

(c) *Jencks' lecture at the Ranch, August 7 or 8, 1950*—Jencks merely spoke of the role of trade unions in the prive for peace and what the witness (not Jencks) characterized as "the Communist-sponsored Stockholm Peace Appeal." Jencks spoke favorably of the Soviet Union's plan for atomic and other disarmament and putting an end to the Korean War in which he called the United States the aggressor and where he said this country had no business. He referred to the "do-day" notion. Jencks also asked the people present to read the Daily People's World which the witness described as a "Communist newspaper." [R. 246-250.]

(d) *The conversation concerning ANMA "about the time of the lecture"*—Matusow told Jencks he had joined the Taos chapter of ANMA, and Jencks replied that this was proper Communist Party concentration work. He added that he was active in ANMA in Silver City, that it was a key organization as far as Communist activities were concerned in New Mexico, and that the Communist Party controlled ANMA and used it as a political sounding board. [R. 251.]

It is significant that, after this testimony, the prosecutor thought it necessary to ask Matusow whether Jencks in any of these conversations *identified himself as a Communist Party member.* [R. 251.] An objection to the form of the question resulted in the court putting this interrogation, "You will answer whether or not Jencks said whether he was a Communist." Immediately the prosecutor said, "I will withdraw that." [R. 252.]

Denial of Access to Informer Reports to F.B.I. Made by the Witnesses Matusow and Ford Contemporaneously With the Events and Transactions Covered in Their Testimony.

At the time he went to the San Cristobal Valley Ranch Matusow was a member of the Communist Party and was reporting his observations and activities to the F.B.I. [R. 289.] Although he was evasive as to the frequency and completeness of his F.B.I. reports,[4] he had previously testified that during the period of his work as an informer within the Communist Party he reported to the F.B.I. "a minimum of once a week" and "in writing" [R. 290] and that he put in his reports "everything that I remembered I saw and heard." [R. 290-291.] He gave his recollection as "completely" as he could. [R. 291.] While at San Cristobal he said he gave both written and oral reports. [R. 292.]

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[4]In earlier cases Matusow had described his reports to the F.B.I. as "complete." Upon production of one of them pursuant to court order he was confronted with the fact that several of the things covered in his testimony were not even mentioned in his "complete" report. [See R. 255-257, 260-263, 266-267.] The case referred to is *United States v. Flynn, et al.*, Case No. C-136-27, United States District Court, So. Dist. N. Y. Aff'd, *United States v. Flynn, et al.* (2d Cir.), 216 F. 2d 354, cert. den. 348 U. S. 909.

It also developed that he had testified twice before about his encounters with Jencks at the Ranch and that on neither of these occasions had he mentioned the conversation with Jencks and Marcus, the "Do-Day" conversation or the one about ANMA. [R. 294-295, 309-310.] He could not recall what he put in his informer reports. [R. 310.]

Upon this foundation petitioner moved [R. 295-296] for an order requiring that the witness' reports to the F.B.I. concerning matters which he saw or heard at the Ranch during the period that he was a guest there and covered by his direct testimony, be produced to the court for examination and inspection, that the court inspect the reports to determine whether they had any evidentiary value in this case for purposes of impeachment, and that if they have that value they, or the relevant portions, be made available to the defense for purposes of cross-examination. This motion was denied. [R. 302.] Defendant then asked that the government be required to turn over the reports to the court and that they be sealed for purposes of the record on appeal, so that the ruling might be subject to proper review on appeal. This motion was overruled. [R. 302.]

Ford remembered that he "reported to the F. B. I. on every meeting." [R. 170.] He could not recall whether the reports he gave on the meetings he testified to were written or oral. [*E.g.*, R. 178, 185, 193.] He made his reports as soon after the meeting as he could, "while things were still fresh in [his] memory." [R. 140.]

Defendant moved for production and inspection of Ford's reports to the F.B.I. on the same grounds and under the same conditions urged in connection with the Matusow reports. [R. 321-322.] The motion was denied. [R. 322.]

Instructions.

1. Membership.

"In considering whether or not the defendant was a member of the Communist Party, you may consider circumstantial evidence, as well as direct. You may consider whether or not he attended Communist Party meetings, whether or not he held an office in the Communist Party, whether or not he engaged in other conduct consistent only with membership in the Communist Party and all other evidence, either direct or circumstantial, which bears or may bear upon the question of whether or not he was a member of the Communist Party on April 28, 1950." [R. 415-416.]

2. Affiliation.

"I have said that the second count of the indictment contains the same essential element as the first count, except that the charge is that the defendant was affiliated with the Communist Party instead of charging that he was a member of the Communist Party. Webster's New International Dictionary defines 'Affiliate' as follows: 'To connect or associate one's self with; to adopt, hence usually to bring or receive into close connection; to ally; to unite or attach such as a member or branch.' Affiliation, as used in subsection (h) of Section 159 of Title 29 of the United States Code, means something less than membership but more than sympathy. Affiliation with the Communist Party may be proved by either circumstantial or direct evidence, or both." [R. 417.]

3. Findings Jury Was to Make.

"The questions for the jury to determine are:

"First, whether the alleged statements of the defendant if he made them are false.

"Second, whether the defendant knew or should have known that these alleged statements were false.

"Third, whether the alleged statements of the defendant were made willfully—bearing in mind the instructions on the element of willfulness that I have given you in these instructions." [R. 415.]

4. Credibility of Informers.

"The witnesses, Jerry W. Ford and Harvey M. Matusow, have testified that for a period of time they received money for services and expenses in furnishing information to the Federal Bureau of Investigation, and you may consider that circumstance when you pass upon the weight and credit which you give them as witnesses, but you are the sole judges of the credibility to be given their testimony. You may take into consideration all the facts and circumstances in determining what weight you shall give their testimony and you are the sole judges thereof." [R. 418.]

Proceedings on the Motion for New Trial.

Following entry of judgment in the District Court, petitioner, on January 28, 1955, filed his motion for new trial. [H. 2-6.] It was made under Criminal Rule 33 (Fed. R. Cr. Proc., Rule 33, 18 U. S. C. A.), based upon the ground of newly discovered evidence and supported

by an affidavit of the witness Matusow dated January 20, 1955. [H. 7-12.] That evidence consisted, in brief, of a complete recantation by Matusow of his trial testimony.

After hearing, from March 7 to March 12, 1955,[5] the motion was denied. [H. 825.] The grounds for denial were that nothing had been developed at the hearing to cause the trial judge to change his "opinion" about "the trial and the testimony and the evidence . . . treated as a whole" or to "doubt. . . . the correctness and the justice of the trial, and of the verdict." [H. 818-819.] The judge immediately thereafter held Matusow in contempt for obstructing justice by making a false recantation. [H. 819-820.] From this we now take it that the real basis for denying the motion for new trial was that the trial judge disbelieved the recantation.

The Evidence on the Motion for New Trial.

Matusow's recantation was complete and detailed. He did not repudiate or qualify any portion of it under battering cross-examination. In brief, it was to the effect that he never had any discussions with petitioner concerning "Communist Party membership or Communist

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[5]The hearing was, with Petitioner's agreement, set so long after the filing of the motion in order to afford the government the time it requested to make its investigation. In the interim there occurred a lengthy hearing before Judge Dimock on Matusow's recantation in the *Flynn* case, where substantially the same issues were raised by the government concerning Matusow's credibility (*United States v. Flynn*, D. C., S. D. N. Y., 130 F. Supp. 412), an inquiry by the grand jury of that court, as well as by the Senate Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws, Committee on the Judiciary. (See Hearings, Feb. 22, 1955, 84th Cong., 1st Sess.) Matusow testified at the hearing on the motion that, of the preceding 30 days, he had spent 17 in testifying about his recantation and the events leading up to it and that the "questions are almost identical." [H. 644.]

Party activities" [H. 29, 30, 32, 33, 34, 37, 38, 40, 42, 47, 48], and that there was no basis for Matusow's stating that Jencks was a member of the Communist Party. [H. 10.] In Appendix I there is set out a tabular comparison of the pertinent portions of Matusow's trial testimony and recantation testimony.

The hearing was given over largely to the government's massive attack upon Matusow's credibility. He was subjected to long and searching cross-examination. Witnesses were produced who touched upon one or another aspect of Matusow's story, and others testified in an apparent effort to corroborate his original testimony at the trial. While his credibility, as such, is not an issue here, we summarize in Appendix II Matusow's story chronologically, inserting the testimony of the other witnesses at the proper places in the sequence.

The government's thesis at the hearing was that Matusow had told the truth upon the trial and had lied in recanting as the result of corrupt inducement moving from petitioner and his union. Its assault upon his credibility followed four main courses (the references below to Items are to the numbered paragraphs in Appendix II):

(1) Before testifying at the trial Matusow had on four occasions testified to substantially the same facts as those given by him at the trial. The prior occasions were the House Committee on Un-American Acativities in February, 1952; the McCarran subcommittee in October, 1952; the grand jury that indicted Jencks in April, 1953; and the Texas Industrial Commission in December, 1953. [Items 1, 2, 7 and 13.)

(2) A transcription of Matusow's tape recording (Item 45) in connection with writing his book [G-9] as well as a draft of the text thereof (Item 49) are inconsistent with his recantation.

(3) Following Matusow's admissions of having given false testimony to Bishop Oxnam and Attorneys Brown and Norvell (see Items 15, 16, 17) he made statements contrary to those admissions and endorsing his prior testimony.[6] These include his July, 1954, testimony to the House Committee on Un-American Activities (Item 21), his conversations with Golden, the Mormon missionaries, and Messrs. Daly, Connors and Koffsky of the Department of Justice. (Items 35, 36, 41, 43.)

(4) Matusow, impecunious before being contacted by those who ultimately published his book, was given money to induce a false recantation. (Items 29, 32, 33, 34, 37, 39.)

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[6]After these men had made public Matusow's admissions of having "borne false testimony and desires to publish a book on the 'World of McCarthy'" for which he had told them he needed a publisher's advance of $1500, petitioner's counsel decided to get a publisher to assist Matusow. (See Judge Dimock in *United States v. Flynn* (D. C., N. Y.), 130 F. Supp. 412, 416.) Contact with a publishing house in New York was made and money paid it for expenses by way of advance purchase of copies of the book if one eventuated. Matusow undertook to write the book for an advance against royalties of $1500. He was contacted by the publishers at Taos, New Mexico, while engaged on a bicycle trip from Dallas. At the time he was low in funds. Mine-Mill paid the publisher a total of $3250 ($2000 of this after completion of the manuscript) by way of advance purchases. It made plans for extensive distribution of the book, for it sought vindication of itself as well as petitioner against the Matusow charges of plotting to cut off copper production for Korea. Matusow knew nothing of the Mine-Mill financial arrangements until after he had given his affidavit of recantation. [H. 631-638, 774-792, 788-789, 802, 803, 809-811, 233-234, 330, 378-400, 453.]

Denial of Access to F.B.I. Reports by Matusow at the Hearing on the Motion for New Trial.

On his redirect examination, and after the foregoing attack upon his credibility, Matusow testified that none of his contemporaneous reports to the F.B.I. made concerning his observations at the vacation ranch in July and August, 1950, indicated that he "had any conversations that established that Jencks was a Communist." [H. 662.] He said they would show that he "had no way of knowing who were or were not Communists, including Mr. Jencks" and that he "never at any time identified Mr. Jencks as a member of the Communist Party in the reports [he] turned in to the F.B.I. in that period when [he] was reporting."[7] [H. 661.] Petitioner asked that the government be required to produce these reports to the court for its examination to determine their relevance to the issue of fabrication in the recantation, only the relevant portions to be inspected by petitioner. [H. 663.] The request was denied. [H. 664.]

Early in his cross-examination Matusow testified that in late August, 1953 (intermediate his testimony to the Grand Jury and his testimony at the trial of petitioner) he had spoken to an agent of the F.B.I. at Santa Fe, New Mexico, stating that he did not want to testify in the Jencks trial, that "I didn't feel my testimony was honest . . . I didn't want ever to testify and especially

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[7]This is of no little significance in light of the refusal of the prosecution at the trial, noted earlier, to permit Matusow to answer the question framed by the judge, "You will answer whether or not Jencks said whether he was a Communist." [R. 252.]

in the Jencks trial that was coming up." The agent wrote down what Matusow said and showed it to Matusow who approved it. [H. 67-69.] The court was requested to order that the F.B.I. records embodying what Matusow said be produced to the court for its inspection to determine its relevance on the issue of the truth of Matusow's testimony at the hearing, the relevant portions to be made available to petitioner. The request was denied. [H. 107, 147.]

Summary of Argument.

1. The contemporaneous informer reports of the witnesses Matusow and Ford should have been produced at the trial in accordance with the terms of petitioner's motion. It was the proper function of the trial judge to determine their relevance for impeachment and thereby protect all legitimate interests of the government. It was not incumbent upon petitioner, under *Gordon v. United States,* 344 U. S. 414, to make a showing of contradiction between the reports and the testimony, as a precondition to production to and inspection by the judge. To impose such a requirement would place the search for truth at the mercy of the witness, who, as in this case, is at best suspect from the beginning.

2. Matusow's contemporaneous informer reports should have been produced, under the procedure just outlined, at the hearing. Matusow was then petitioner's witness, recanting his trial testimony, and his recantation was attacked by the government as a recent fabrication corruptly induced. The reports were proper and relevant to

rehabilitate Matusow from this attack. Further, production and inspection of the reports, as the best available evidence of the facts in issue, were necessary to satisfy the court's responsibility to find the truth out of a "fastidious regard for the honor of the administration of justice."

3. By essentially the same reasoning petitioner's motion for the production of a memorandum of interview between an F.B.I. agent and Matusow, held intermediate the grand jury proceedings and the trial, in which Matusow said that he did not want to testify at the trial and that his grand jury testimony was dishonest, should have been granted. This memorandum together with the contemporaneous informer reports might have shed light on whether perjurious testimony was knowingly used at the trial.

4. The instruction on membership utterly failed as a statement of legal criteria to guide the jury. It failed to convey the meaning of membership as a legal principle or to explain the significance of evidence that might manifest that the crucial "act of joining" had been consummated. It left the issue entirely at large upon all the evidence. In this fashion it deprived petitioner of a jury trial and invaded the legislative power of Congress. It permitted a finding of membership on pre-affidavit evidence alone (thereby conflicting with the gloss upon the statute enunciated in *American Communications Assn. v. Douds*, 339 U. S. 382, 413-414), and rested upon a presumption of continuance that was both arbitrary and

a subversion of the presumption of innocence. For all these reasons and because it permitted a finding of membership from constitutionally protected speech and association, the instruction applied the statute as a dragnet without an ascertainable standard of guilt. The language of the charge was in such conflict as to mislead or confuse the jury on the key question of whether they had to find knowing falsity or falsity which petitioner "should have known."

5. The instruction on affiliation suffers all the defects of that on membership. Additionally it defined affiliation in a manner in conflict with this Court's holding in *Bridges v. Wixon,* 326 U. S. 135, 142 ff., by failing to require either the needed closeness and reciprocity of duty or alliance for proscribed purposes.

6. The instruction on credibility of informers was deficient in that it failed to afford the jury adequate criteria by which to determine the credibility of hired informers. It neither advised the jury of the low estate of such persons as a matter of law or of the standard by which their testimony is to be adjudged.

ARGUMENT.

POINT ONE.

The Court Below Erred in Affirming the Ruling of the Trial Court, Which Denied Petitioner's Request for an Order Requiring the Government to Produce the F.B.I. Reports to the Court for Its Determination as to Relevance and Making Available to Petitioner Such Reports as Were Relevant.

(a) Petitioner's Request, at the Trial, With Reference to Matusow's Reports to the F.B.I. Which He Was Employed to Make and Did Make Contemporaneously With the Transactions Covered in His Direct Testimony.

The facts summarized *ante*, pp. 14-15, amply warrant the conclusions that frequent and regular reports were made by Matusow in the course of his employment as informer for the F.B.I., that these reports dealt with the subject matter of his direct testimony, and that they had been delivered by him to the government. The reports were, in effect, Matusow's contemporaneous recordings of the occurrences he witnessed or participated in. As such they were as much admissions by him as signed statements given to government investigators. The time period of the reports was from between July 15 and 20 to August 7 or 8, 1950. [R. 244, 246, 251.]

Petitioner's motion asked for the production of narrowly described documents, namely, the reports made by Matusow of the things he saw and heard at the guest ranch and covered by his direct testimony. Since Matusow said he reported at least once a week, the number of reports asked for was probably slightly in excess of

three. Petitioner asked only that the reports be produced to the trial judge so that he could examine them and determine whether they had evidentiary value for impeachment purposes. Petitioner sought access only to those portions of the reports having this value. The motion therefore proposed no broad foray into the government's files and afforded the judge every opportunity to protect the government's legitimate privilege as to the matters not connected with this case.

This Court has observed that where "the Government's case may stand or fall on the jury's belief or disbelief of one witness, his credibility is subject to close scrutiny." *Gordon v. United States*, 344 U. S. 414, 417. That policy applies with special force to the case at hand. Even the prosecutor admitted that Matusow's testimony was "absolutely essential." [H. 13.] The government's burden was to convince the jury that petitioner had knowingly falsified his denial of connection[8] with the Communist Party as of April 28, 1950. Only Matusow's testimony speaks of the period after that date.[9] All the rest speaks of a period nine months to four years before that date. As we shall show in Point Two, *infra*, the pre-affidavit evidence, standing alone, was insufficient as a matter of law

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[8]We use this term as a shorthand for "membership in and affiliation with."

[9]His credibility had been sharply attacked at the trial. On two prior occasions of testimony concerning Jencks, Matusow had failed to mention three of the four incidents related at the trial. [R. 294-295, 309-310.] A quondam hired informer and renegade Communist, he had turned his revelations into money as an expert on anti-Communism and campaigner for Senator McCarthy. [R. 311-319.] His repeated lies about his residence had been used to obtain improper voting privileges [R. 269-275] or jurisdiction for a divorce action [R. 279-280] or to obtain travel money he was not entitled to. [R. 282-283.]

under *American Communications Assn. v. Douds, supra.* The court below found the evidence sufficient only upon "the Government's total proof." (226 F. 2d at 547.)

Given these circumstances all information that would assist a discriminating appraisal of Matusow's trustworthiness was an undeniable prerequisite to the fairness of the trial. The trial court's action resulted in withholding facts that might have had inestimable value[10] in impeaching this key witness, already suspect. The Court of Appeals in the Second Circuit holds that under these circumstances the government must produce the reports. Where it is not possible for the accused to show the contradiction before the document is produced, it must be produced to the court for it to determine whether it is relevant for impeachment purposes. If it is so relevant the accused must be allowed to inspect it. *United States v. Krulewitch*, 2 Cir., 145 F. 2d 76, 79; *United States v. Cohen*, 2 Cir., 145 F. 2d 82, 92.[11]

The Court of Appeals in the Ninth Circuit has held even more broadly. *Fisher v. United States*, 9 Cir., 231 F. 2d 99. There the court held a defendant in a similar

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[10]As contemporaneous records of the matters they recite, prepared under directions and in accordance with a practice to be all-inclusive, the reports were perhaps the best evidence of those matters—superior to the unaided recollection of the witness given three and one-half years later. 3 Wigmore, *Evidence*, 3d ed., p. 76, Sec. 738. Even their failure to report the incidents covered in the direct would have amounted to an "assertion of their non-existence." Wigmore, *op. cit.*, p. 733, Sec. 1042.

[11]Indeed under the holdings of that court the accused is entitled to production of documents in possession of the government which have any relevance to the issues being tried, whether for impeachment or otherwise, and it is for the trial court to examine the documents and give the accused access to those which are relevant. *United States v. Beckman*, 2 Cir., 155 F. 2d 580, 584; *United States v. Andolschek*, 2 Cir., 142 F. 2d 503, 506.

case was entitled to receipts given by an informer witness for money paid by him by the F.B.I. over a period of eleven years. The purpose of the request was to impeach the informer's testimony that he and his wife had served their ignoble role only out of patriotic motives by showing that they had been paid for their services above and beyond their out-of-pocket expenses. Apparently the court held that the receipts should have been turned over directly to the defense without prior examination by the trial judge. (231 F. 2d at 104.) In the *Fisher* case, as in *Krulewitch* and *Cohen*, it is apparent that the appellate court was heavily influenced by the fact that the witness sought to be impeached was, as here, crucial to the government's case.

In an impressively reasoned opinion, Judge Mathes of the District Court, Southern District of California, held that a defendant in a Smith Act prosecution is entitled to production of the informer's contemporaneous reports covering the incidents testified to on direct. *United States v. Schneiderman* (D.C., Cal.), 106 F. Supp. 731. He followed the procedure, approved by the Second Circuit, of production to the trial judge for *in camera* inspection to determine the evidentiary worth of the documents. Central to the holding are two important considerations intimately related to the sound administration of justice: *First*, that the motion for such production must be considered in light of the Sixth Amendment guaranty that "the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor." (106 F. Supp. at 735.) *Second*, that the Attorney General, as the officer in charge of the prosecution, labors under the duty to see that "justice be done" and to that end may not withhold from the court "evidence essential

to proper disposition of the case, including *a fortiori* any evidence which may be material to the defense of the accused." (106 F. Supp. at 739.)

In sustaining the trial judge the court below held, under *Gordon v. United States*, 344 U. S. 414, that petitioner was not entitled to have the reports produced as requested unless he first showed they were inconsistent with the direct testimony. (226 F. 2d at 552.) The Court of Appeals misconceived the holding in the *Gordon* case. There the accused developed on cross-examination that the government's principal witness had given several statements about the criminal transactions in which he did not implicate the defendant. Upon this showing the defendant requested production of the statements. It would appear that the accused's motion was for direct access to the documents. (344 U. S. at 417-418.) This Court held that upon the foundation there laid such production was necessary. Here, on the other hand, there was no showing of contradiction and the accused therefore made a different request. The trial court in this case was asked to require the production of the documents *to it* so that *it* could inspect them and give petitioner access only if the contradiction appeared. The *Gordon* opinion does not reach this situation. It was not presented there, and this Court explicitly confined its holding to the facts there appearing. (344 U. S. at 418.)[12]

There are strong reasons for not requiring the showing of contradiction before production is made to the

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[12]The Court of Appeals also relied on *Bowman Dairy Co. v. United States*, 341 U. S. 214, and *Goldman v. United States*, 316 U. S. 129. (226 F. 2d at 552, n. 19). Those cases deal with pretrial production of real evidence, not extra-judicial statements of a witness called by the government. They appear to have no application here.

trial judge for his determination of evidentiary value. Such a showing was expressly held unnecessary in *Krulewitch* and *Cohen, supra,* as it was in *United States v. Mesarosh* (D.C. Pa.), 116 F. Supp. 345, 350. In *Fisher* and *Schneiderman, supra,* the issue was apparently not raised. The production of the document initially to the trial court protects all of the government's legitimate interests. The government's interest in limiting or barring inspection is obviously a three-fold one: to prevent fishing expeditions into its files and the consequent interference with the functioning of its agencies; to protect the prosecutor's privilege against disclosing names of informants or other matters that would cripple its law enforcement activities; and to protect state secrets.[13] The first of these objectives is served by reasonable requirements as to specificity of description in the defendant's motion. See *United States v. Mesarosh, supra.* Surely that was accomplished here as it was in *Krulewitch, Cohen, Fisher* and *Schneiderman, supra.* The governmental privileges, covering state secrets and prosecutor's information, is waived by bringing the action (*United States v. Andolschek,* 2 Cir., 142 F. 2d 503, 506; *United States v. Beckman,* 2 Cir., 155 F. 2d 580, 584; *United States v. Coplon,* 2 Cir., 185 F. 2d 629, 638) so far as the documents con-

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[13]Other than as above indicated the government's only interest can be in the production of such evidence as to secure the doing of justice in the case. ". . . the state has no interest in interposing any obstacle to the disclosure of the facts, unless it is interested in convicting accused parties on the testimony of untrustworthy persons. But surely the state has no such interest; its interest is that accused parties shall be acquitted unless upon all the facts they are seen to be guilty; and if there shall be in the possession of its officers information that can legitimately tend to overthrow the case made for the prosecution, or to show that it is unworthy of credence, the defense should be given the benefit of it." *People v. Davis,* 52 Mich. 569, 573-574, 18 N. W. 362.

tain matters of evidentiary value. The request, made here, that the reports be first handed to the trial judge to determine which of the contents had that value, provides full protection to the government. It is thereby required to show the defense only those things, as to which it has waived its privilege by bringing the action. Since here the evidentiary value of those things is their inconsistency with the witness' direct, the foundation of contradiction is in fact laid before the document can reach the eyes of the defense.

On the practical side there are equally cogent reasons for not requiring a showing of contradiction before the government is required to show the documents to the court. For such a precondition must of necessity largely frustrate the search for truth precisely where the need for probing cross-examination is greatest. In this case we deal with a hired informer and professional witness who testified to uncorroborated oral admissions, the weakest and least reliable of evidence. 4 Wigmore, *Evidence*, 3d ed., p. 17, section 1056; 7 Wigmore, *op. cit.*, pp. 466-477, section 2094. The very factor that renders the informer so untrustworthy, viz., his interest in preserving his source of income as spy and witness (see Point Four, *infra*), demonstrates the unlikelihood of his frank admission that a prior report belies his testimony.[14] But aside from propensity to protect his livelihood and his hirer, the informer may honestly say that he does not remember the contents of a report written several years before. He might not be able to recall having written one. But if the reasoning of the court below were adopted, the at-

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[14]In the *Gordon* case, *supra*, the witness was apparently a criminal but not an informer in the career sense that Matusow served. (See *Communist Party v. Subversive Activities Control Board*, 351 U. S. 115, 120.)

tempt to obtain the impeaching material would be halted *in limine* by the mere word or faulty recollection of a suspect witness.

In the case at bar precisely this situation is presented. The examination designed to establish the contradiction between the reports and Matusow's direct testimony was blocked by his reply. He was asked, "Did you put anything in your written reports to the F.B.I. about 'doday,' "[15] and he answered, "I don't recall what I put in my reports two or three years ago, written or oral, I don't know what they were." [R. 310.] It was thus impossible to establish the contradiction even in general terms and further inquiry would have been futile. It would indeed make a mockery of the judicial pursuit for truth if it could be frustrated so easily, and perhaps with complete dishonesty. This is more impressively the case when one considers that the government must know what the report shows. If it supports Matusow's trial testimony, production cannot hurt any governmental interest. (*Cf., Fisher, supra,* at p. 104.) Since the trial court's examination of the document to ascertain relevancy will protect such interest, the government's insistence on such empty formalities as it here asserts appears to be either advantage-seeking in a game of wits or unwillingness to let the District Court exercise a sound legal discretion.

The developments since the trial show that the mere possibility of obtaining an admission of contradiction can

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[15] Plainly a failure to refer to this most inflammatory incident of his entire testimony would have established a contradiction because under the circumstances it would have amounted to an "assertion of [its] non-existence". Wigmore, *supra*, n. 10. The question was also preliminary to inquiry about the contents of the report in the event of an affirmative answer.

be made utterly dependent on the witness and the complex interplay, within him, of the pressures of interest. In recanting, Matusow admitted that his contemporaneous reports not only contradicted his trial testimony but showed that he had no basis for calling Jencks a Communist. [H. 661.] Assuming, *arguendo*, the government's position that the recantation was corruptly induced the demonstration of the effect of interest is complete. While he was a professional informer-witness he supplied the government with what it needed and gave answers, like the one above, which blocked efforts to impeach him by his own prior statement.[16] When he moved over to the opposing camp he gave them what was needful in destroying his trial testimony. The document itself on the other hand would provide an objective measure of truth, speaking of a time when the influences of interest were least and memory sharpest. [See R. 310.] Empty technicalities opening the door to the caprice of questionable witnesses should not be allowed to bar access to the most reliable guide to the truth.

(b) Petitioner's Request, at the Hearing on the Motion for New Trial, With Reference to the Same Reports.

At this proceeding Matusow testified as a witness for petitioner and recanted his trial testimony. On cross-examination his recantation was attacked as a recent fabrication corruptly induced by petitioner or others acting in his interest. On redirect he testified in effect that his contemporaneous reports to the F.B.I. belied his trial testimony and supported his recantation. The facts

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[16]At the trial Matusow was obviously prepared to parry, and if possible frustrate, examination about his reports. Earlier experience with the same cross-examiner had alerted him to the danger of impeachment. [See R. 255-267.]

are summarized, *ante*, pp. 21-22. It was at this juncture that petitioner made a new motion that the reports be produced; this, substantially in the same form as at the trial. [H. 663.] The judge denied the motion [H. 664], saying that the government need not "produce anything from the secret files of the F.B.I." [H. 664.]

It would appear that petitioner had done all that could reasonably be asked of him to lay a foundation that (a) the reports existed and were in the possession of the government, (b) they were Matusow's own reports, (c) they were consistent with the recantation and contradictory of the trial testimony, (d) they were contemporaneous with the events they record, and (e) they were made long prior to the facts relied on by the government to show corruption or other motive for fabrication.

Upon this foundation the reports had obvious relevance. As part of his redirect they were admissible to rehabilitate Matusow as extra-judicial statements consistent with his direct testimony at the hearing and made prior to the facts showing fabrication or motive to do so. *Ellicott v. Pearl*, 35 U. S. (10 Pet.) 412, 439. This rule of admissibility has found general acceptance. 4 Wigmore, *Evidence*, 3d ed., pp. 203-207, sections 1128, 1129. Under the decisions of the Court of Appeals for the Second Circuit the exclusion of such a statement in a civil case is reversible error. *Gelbin v. N. Y., N. H. & H. R.R. Co.*, 2 Cir., 62 F. 2d 500, 502. This kind of evidence is the more valuable when, as here, the rehabilitating declaration is provided by the witness himself, thus permitting cross-examination of the declarant. *Di Carlo v. United States*, 2 Cir., 6 F. 2d 364, 366; *Beaty v. United States*, 4 Cir., 203 F. 2d 652, 656.

The foundation laid having so plainly indicated the relevance and the admissibility of the reports, the least

that was called for was that, under the decisions of the Second Circuit cited in subdivision (a), *ante*, the reports be produced to the judge so that he could verify their relevance and turn them over to petitioner. Indeed, upon this Court's holding in *Gordon v. United States*, the reports should have been made available directly to petitioner.

There is a compelling reason of policy why the trial court should have ordered the reports produced at least to it. The trial court is vested with a special responsibility to satisfy itself that the recantation is true. For it is under a duty both to see that justice is done to an accused as well as to protect its own judgments. *United States v. Johnson*, 327 U. S. 106, 112-113; *Larrison v. United States*, 7 Cir., 24 F. 2d 82, 88; *Martin v. United States*, 5 Cir., 17 F. 2d 973, 976; *Gordon v. United States*, 6 Cir., 178 F. 2d 896, 900. The recantation standing alone raised grave questions of perjury either at the trial or at the hearing, and these were aggravated, not settled by the government's attack upon it as a fabrication. Perjury taints the judicial process as perhaps nothing else. The situation facing the judge was one where "fastidious regard for the honor of the administration of justice requires the Court to make certain that the doing of justice be made so manifest that only irrational or perverse claims of its disregard can be asserted." *Communist Party v. Subversive Activities Control Bd.*, 351 U. S. at 124.[17]

The reports offered the surest path to the needed certainty. We have already noted why almost five years

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[17]Matusow is one of the three witnesses against whom there was an uncontested challenge of perjury in that case, 351 U. S. at 123.

after the events they are the best evidence of the transactions they record. (See p. 27, n. 10.) The judge denied himself use of these reports in the discharge of his high responsibility. In this he abused his discretion.

Additionally, the trial court's ruling eliminated a significant inference against the government at the hearing. It was the government which then asserted that Matusow lied. It was the government which had possession of Matusow's contemporaneous reports. For the reasons already given those reports were either the best evidence of the fact in issue or the strongest evidence then available. The government had not produced those reports, and the judge's ruling was that it was "not required to." [H. 664.] Thus did the judge prevent himself from drawing against the government and in favor of petitioner an inference from the former's failure to produce stronger evidence within its power to present. Such a failure is itself "evidence of the most convincing character." *Interstate Circuit v. United States,* 306 U. S. 208, 226.

This being a matter which invokes the supervisory functions of the Court, we direct attention to the disparity between the procedure followed by the trial judge, and sanctioned by the court below, and that followed by Judge Dimock in *United States v. Flynn* (D.C., N.Y.), 130 F. Supp. 412.[18] There (almost simultaneously with his re-

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[18]In addition to the instance recited in the text, the writer of this brief represents, on the basis of his own participation, that a similar difference exists on the trial records in the two cases. In *Flynn* (conviction affirmed (2d Cir.), 216 F. 2d 354, cert. den. 348 U. S. 909), Judge Dimock granted the defense motion for production of one of Matusow's F.B.I. reports. He examined it and released to the defense such portions as were, by affirmative assertion or by non-assertion, contradictory of the witness' direct. If the government contests this statement, petitioner will upon notice produce the pertinent excerpt from the *Flynn* record.

cantation here.) Matusow recanted his trial testimony in a Smith Act case, and at the hearing on the motion for new trial the government offered the same facts to show fabrication. But there Judge Dimock concluded that the trial testimony was "the lie." (*Idem.*, p. 416.) This, because he examined the F.B.I. reports (essentially similar to the ones sought by petitioner below) together with memoranda of interviews by government lawyers and found a pattern of embellishment in accordance with "Matusow's propensity to lie." (*Idem.*) We are of course not here concerned with whether Matusow lied at the trial or in recanting. But it is more than coincidence that the different conclusion by Judge Dimock followed upon resort to the F.B.I. reports. The failure here to employ this usual and accepted instrument for ascertainment of truth reflects a disturbing disregard of law protecting those accused of crime.

The court below affirmed the action of the District Court on what appears to have been two misconceptions. The first of these is that in the appeal from the motion for new trial petitioner simply "repeats the argument" made on the appeal from the judgment. (226 F. 2d at 560.) The second is that on the appeal from the denial of the motion, so far as access to F.B.I. records are concerned, petitioner rested "largely" upon a motion for production which is discussed in the next subdivision of this Point One.

In both of these respects the Court of Appeals was mistaken. Petitioner addressed a new motion for production to the trial judge at the hearing on the motion for new trial. [H. 663.] That motion sought production of the same documents and in accordance with the same procedure as the motion made at the trial. The relevancy of the documents, however, turned on quite different con-

siderations as above outlined. Moreover the motion just described is quite a different one from that dealt with in the next subdivision. The motion at H. 663 requested the production of Matusow's contemporaneous reports which he said he had delivered to F.B.I. agent Burttram. [H. 661.] The nature of the motion the court below referred to will appear below.

For all the reasons here indicated the complete frustration of petitioner's efforts to obtain limited access to the reports in question was a grave deprivation of a fair hearing. Without Matusow's testimony the government's case could not approach the nodal point of legal sufficiency. His reference to stopping copper production for the Korean War was inflammatory. It is of the essence of the right to defend that one be permitted reasonable scope in destroying the credibility of the witnesses against him. This is the more compellingly true when, as in the case of Matusow, the witness made a profession of so testifying and his testimony consisted only of uncorroborated oral admissions, by nature the least reliable of evidence. At the trial petitioner was denied this opportunity on the very subject matter of the witness' testimony. At the hearing on the motion for new trial, the judge deemed the recantation to be untrue without giving petitioner access to the one item of evidence that might have been determinative of the question. The Court of Appeals regarded the recantation as the product of "the machinations of evil men." (226 F. 2d at 559.) But both courts reached these results without the benefit of the most reliable searchlight for truth. If petitioner is to be punished for a crime and denounced as a procurer of fabrication, the least that elemental fairness requires is that his judges resort to the most trustworthy facts afforded by the cir-

cumstances. Short of this, there cannot be the requisite certainty that justice has been done. The proceedings in this case reflect neither justice nor the appearance of justice; there is a cloud upon the judgment.

(c) Petitioner's Request, at the Hearing, for the Record of Matusow's Interview With the F.B.I. Agent at Santa Fe.

The facts concerning this matter have been summarized *ante*, pp. 21-22. This is a motion distinct from the one at H. 663. It was directed to a memorandum of an F.B.I. agent at Santa Fe, New Mexico, in 1953, prepared for Matusow and approved by him.

The document was relevant for rehabilitation purposes to the same extent as the contemporaneous report. Its existence was developed on cross-examination of Matusow during the government's effort to prove that the recantation was a recent fabrication. The record, if it contained what Matusow said it did, tended to corroborate the recantation. It was permissible rehabilitation because it would speak as of a time antedating the facts allegedly showing fabrication or the motive to do so.

But here also far more is involved, for the situation again called for certainty that the taint of perjury had not darkened the proceeding. If Matusow had in fact told the government, before testifying at the trial, that his grand jury testimony was "dishonest" [H. 68], there is then presented an acute issue as to the government's conduct of the trial. For such a statement by Matusow would have put the government on notice of possible falsity in his testimony. The most natural and necessary starting point for the required investigation of the witness whom the government was about to sponsor would have been the contemporaneous reports to the F.B.I. If, as Matusow stated at the hearing, these reports failed to

assert the facts he was about to testify to at the trial, or asserted facts showing he could not know what he was about to testify to at the trial, his worth as a witness would have been destroyed. Then, if notwithstanding such developments he had nevertheless been presented by the government at the trial, grave questions would be raised as to whether, at the trial, the government had used testimony which its agents knew or had reason to believe was perjurious. This in itself would have necessitated a new trial. *Mooney v. Holohan,* 294 U. S. 103; *White v. Ragen,* 324 U. S. 760, 764.

We of course are not in a position to, and we do not, charge that this is what the government did. We do assert that the court's ruling blocked off a vitally serious line of inquiry pertinent to the question whether Matusow lied at the trial or on the motion for new trial. With Matusow's statement that he had admitted falsity to the F.B.I. agent [H. 68], together with his admission that his F.B.I. reports failed to mention Jencks and showed that he did not know that Jencks was a Communist [H. 661], more than enough was put before the trial court at the hearing to require the fullest investigation into both what Matusow knew the truth to be and the government's awareness of Matusow's knowledge. To preclude such inquiry, while purporting to be engaged in the pursuit of truth, is nothing less than arbitrary.

The court below affirmed on one ground, *inter alia,* that Matusow's testimony about the F.B.I. interview gave "only a vague hint of dishonesty" while the F.B.I.

agent gave an entirely different version which the trial court "was justified in accepting." (226 F. 2d at 561.) The court failed to perceive that the real issue was the existence of a third version, the one in the report. This had a greater likelihood of accuracy and reliability as a contemporaneous record, than the memories (nearly two years later) of two obviously interested witnesses. Another ground for affirmance was the asserted authority of the lower court's decision in *Shelton v. United States*, 5 Cir., 205 F. 2d 806, 814. There the trial court had refused to release to an accused a witness' statement to the F.B.I. The case has no application. The witness was an accomplice and it was conceded that the report corroborated his testimony. Production was sought on the ground that the report contradicted earlier action and oral statements of the witness "not incriminating the defendant." The situation there does not remotely resemble this case. Finally the ruling of the Court of Appeals rests on the assertion that this Court in the *Gordon* case requires a showing of inconsistency before the government has to produce the document. In subdivision (a) above we have shown why the *Gordon* rule does not apply, and is not needed, in cases where the document is to be first produced to the court.[19] But in no sense can the *Gordon* case control a situation where the document is sought to rehabilitate a witness charged with recent fabri-

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[19]That procedure, incidentally, was followed by the trial court in *Shelton*, and the document was denied the defendant only because the court's examination of it disclosed no relevance. (205 F. 2d at 814).

cation. In that situation, as here, the foundation is laid by the witness' testimony on redirect that the prior writing confirms his direct and was made before the facts claimed to show fabrication or motive to fabricate.

(d) Petitioner's Request, at the Trial, With Reference to Ford's Reports to the F.B.I., Which He Was Employed to Make, and Did Make, Contemporaneously With the Transactions Covered in His Direct Testimony.

The facts are summarized, *aute*, p. 15: This is a situation in all respects similar to the motion at the trial for production of Matusow's reports. It is governed by the same principles as those set out in subdivision (a) above and they need not be repeated.

There remains only to point out the importance of Ford. His testimony is all pre-affidavit and for that reason is insufficient to support the verdict, under *American Communications Assn. v. Douds, supra.* On the other hand the court below in affirming the denial of the motion for new trial said:

> "There was ample evidence before the jury at the trial to warrant a conviction without the testimony of Matusow. We hold that, upon the whole record, it is manifest that the testimony without Matusow was so convincing that it is difficult to justify the thought that any other result could have been reached if Matusow had not been present as a witness." (226 F. 2d at 560.)

In affirming the conviction that court put primary emphasis on the pre-affidavit evidence. (226 F. 2d at 547, 549.) Of that evidence Ford's testimony was by far the most impressive. He testified to a series of five meet-

ings with petitioner. He named petitioner as an officer of the party for the period April to August, 1949, and provided admissions of petitioner as to how he functioned in that capacity. If the pre-affidavit evidence, taken alone, has any significance in the case, Ford's carried the most weight.

Moreover, the government attempted to project Ford's testimony past the affidavit date. He testified that he remained an officer of the party until September, 1950, and that in that time Jencks was not "replaced in his position on the State Board" [R. 133] and that no disciplinary action was taken against Jencks in Jencks' presence. [R. 115, 119.] That Jencks was not replaced of course is no proof that he remained in the position. That he was not disciplined in his own presence is not evidence that his connection, if any, with the party did not otherwise terminate. But the prosecutor made much of the testimony to convince the jury of petitioner's membership on the affidavit date. [R. 457.]

Petitioner was entitled to have the reports examined by the trial judge and made available if they provided impeachment material.

POINT TWO.

The Court Below Erred in Approving the District Court's Charge to the Jury as Well as Its Refusals to Charge on the Issue of Membership.

The charge which was given on the issue of membership is set out *ante*, p. 16. Defendant's requested charge is found at R. 462.

(a) The Charge Was an Abdication by the Trial Court of Its Responsibility to Guide the Jury by Appropriate Legal Criteria.

Membership is not a self-defining term, and the common understanding provides no clear single meaning. Faced with the necessity of comprehending and applying the legal meaning of membership and determining whether the status existed at a particular point in time, the jury was given no guidance at all. The instruction provided no legal principle defining membership in a voluntary association, prescribing its elements or describing how it is begun or how continued. Additionally, the instruction contained no yardstick in terms of the kind of conduct which would evidence the fact that such a relationship had been entered into and was subsisting on the critical date.

The court ignored the legal principles usually operative in defining and evaluating the membership relation. It is generally accepted law that membership in a voluntary association is consensual and that the act of joining and of acceptance as such is manifested by compliance with the formalized requirements of membership laid down by the organization itself. (See *United States v. Reimer*, 2 Cir., 79 F. 2d 315; *Fisher v. United States*, 9 Cir., 231

F. 2d 99 (membership in the Communist Party); *Smith v. Kern County Medical Assn.*, 19 Cal. 2d 263, 120 P. 2d 874 (membership in a professional society); *Chapman v. American Legion*, 244 Ala. 553, 14 So. 2d 225 (membership in a service organization); *Kubilius v. Hawes*, 322 Mass. 638, 79 N. E. 2d 5 (membership in a church); *Traders Mutual Life Ins. Co. v. Humphrey*, 109 Ill. App. 246 (membership in a fraternal order).) But of course so general a formulation can be given meaning for present purposes only in terms of the specific conditions of membership in the particular organization under inquiry. At the trial the prosecutor's expert, Eckert, testified that "during the years 1945-1950" the Communist Party had a constitution which contained "provisions dealing with the conditions for obtaining and retaining membership." [R. 408.] The government made no effort to prove that constitution, and the record contains no evidence as to the conditions for membership actually observed by the party.

The trial judge refused to charge, as requested by petitioner, that "joining the Communist Party is a mutual arrangement between a particular person and the Communist Party. . . . The burden is on the prosecution to prove beyond a reasonable doubt what the conditions were for membership in the Communist Party and that the defendant accepted those conditions on or before April 28, 1950." [R. 462.] By such a standard the jury could have been directed to find whether there had been an "act of joining" (*Douds*, 339 U. S. at 411); which satisfied the consensual requirements recognized in law. There is not a word in the charge which by so much as implication directs the jury's attention to this aspect of membership.

On the other hand where, as here, the charge does not utilize the standard of compliance with the formal requirements but attempts standards predicated upon conduct that manifests the existence of the relation, the vagueness of the membership concept presents serious difficulty. This Court found fatally vague a statute penalizing "Any person . . . known to be a member of a gang" on the ground, *inter alia*, that the statute failed to indicate "what constitutes membership" or "how one may join." *Lanzetta v. New Jersey*, 306 U. S. 451, 458. Here we deal with a political and propaganda organization wherein the status of membership is notoriously lacking in contour and scope. Speaking of such membership, Professor Chafee has correctly observed, "It is not a matter of record like being a stock holder in a business corporation. Or take a club. A man is elected to it, he pays regular dues, he resigns in order to stop his dues; but in these propaganda enterprises, joining and leaving are very informal and dues are either loosely collected or non-existent. If one comes to dislike new associates or new purposes, he just stops doing anything. . . . ." (Chafee, *The Blessings of Liberty*, 1956, p. 243.) As respects the specific propaganda organization called the Communist Party, the views of Congressional specialists and the Attorney General, as well as provisions of substantive law, show that the term membership has been responsibly viewed so broadly as to extend beyond those who have fulfilled the act of joining to those who evince ideological similarity or parallel advocacy.

The House Committee on Un-American Activities has stated that persons "accepting Communist Party discipline" may be "either secret members or outsiders," and in either case "may be recognized by the regularity with

which" they follow the party's "line." (*Guide to Subversive Organizations and Publications*, (1951), p. 5.) The attorney General has said that party "membership [often is] provable [principally or only] by circumstantial evidence of party line activity or association." (100 Cong. Rec. 15112.) The Communist Control Act of 1954 (Act of Aug. 24, 1954, c. 886, 68 Stat. 775, 50 U. S. C. A. 841 ff.), while not explicitly defining membership in the Communist Party, does describe (50 U. S. C. A. 844) evidence which "shall" be considered by the jury in prosecutions under it. These provisions embrace such obviously protected conduct and expression as conferring with officers or members of the organization in behalf of any of its plans (subdivision 6); communicating directives or plans of the organization (subdivision 8); preparing publications "in behalf of the objectives of and purposes of the organization" (subdivision 9); sending or delivering to others "material or propaganda of any kind in behalf of the organization" (subdivision 10); imparting "information, suggestions, recommendations to officers or members of the organization or to anyone else in behalf of the organization" (subdivision 11); indicating "a willingness to carry out in any manner and to any degree the plans, designs, objectives or purposes of the organization" (subdivision 12). Congressional debate elicited at least two observations that this section defined membership. (Rep. Feighen at 100 Cong. Rec. 14849, and Rep. Dies at 100 Cong. Rec. 14849 and 15237.) Commentators have taken a different view. (23 U. of Chi. L. Rev. 173, 182, n. 28; 64 Yale L. J. 712, 750.)

From all that has been said on the meaning of membership, when viewed apart from compliance with the organization's formal requirements, it is fair to conclude

that laymen jurors cannot function without specific judicial guidance. The vice of the trial court's charge is that it gave no direction as to the kinds of conduct relevant to show the existence of the growingly amorphous membership relation. It did not advise the jury that any particular conduct need be found. The jury was told, "You *may* consider" and thus was left free to consider or not the matters thereafter mentioned. The jury was thus permissively told it could consider pre-affidavit attendance at Communist Party meetings and holding office in the party. The significance of either of these items in relation to establishing the act of joining or the existence of the membership relation at the crucial time was not explained. An isolated act of attendance at a party meeting would doubtless be of no value to prove the act of joining. So also a spasmodic attendance, irregular and with long absences in between. The very least that would seem necessary is a course of such conduct over a sustained period. But even that raises additional problems (discussed in subdivision (b), *infra*) as to the inference to be drawn from such conduct concerning membership as of a substantial period of time after the conduct was last shown to have occurred. Here the jury was allowed, not directed, to consider attendance at meetings without any specification as to the number or frequency thereof or the regularity of attendance.

The theory of the prosecutor in presenting his case [R. 3] and of the trial court in ruling on the evidence [R. 85] was that membership would be shown by a course of continuous conduct from March 1946 "up to and through April 28, 1950." The case was argued to the jury on the same basis. [R. 442, 447.] This charge, however, lays down no requirement that the jury find

the course of conduct to be continuous for any period of time. The words, "You may consider whether or not he attended Communist Party meetings" left it to the jury to consider attendance at any one meeting at any particular time, or any combination of meetings at whatever separation of time.

But over and above these deficiencies the instruction disastrously misled the jury. For it authorized a finding of membership predicated upon the character of meetings as "Communist Party meetings" in the absence of probative evidence of that fact. It did so at large without differentiation as to the description in the evidence of the kind of meeting or the competence of the witness to characterize it. Currie [R. 86], Ford [R. 101, 102, 109], Peterson [R. 214, 216, 224] and Eckert [R. 328, 330, 332] all testified to attendance at meetings which were described equivalently as "Communist meetings" or attended only by persons who were "known" to the witness to be Communists. In *Bridges v. United States*, 9 Cir., 199 F. 2d 811, 836, the effort to prove Communist membership by evidence of mere attendance at meetings confined to Communists was dismissed as circular reasoning which "assumes the truth of that which is sought to be proven. If, in fact, Bridges was not a Party member, his presence at such a meeting would mean no more than that he attended a meeting at which every other person present was a Party member." In *United States v. Holton*, 7 Cir., 222 F. 2d 840, 844, evidence to prove that the accused was a Communist by testimony that he worked on a foreign language newspaper where "only persons who are Party members are hired to work" was held to be without probative value. The instruction, then, invited a finding on membership without legal evidence. Additionally

the instruction, by virtue of its assumption that the meetings described in the evidence were in fact "Communist Party meetings," in effect found them to be such. In this it was egregiously improper since it deprived petitioner of a jury's finding on this important issue of fact.

However uninformative and misleading the portion of the membership charge so far discussed, the balance of it left the issue wholly at large. The jury was told, "You may consider . . . . whether or not he engaged in other conduct consistent only with membership." [R. 416.] That kind of conduct was completely undefined, and the jury was left to its own judgment to decide what that conduct was. All semblance of legal guidance was destroyed utterly and finally by the concluding language of the instruction, "[you] may consider . . . all other evidence . . . which bears or may bear upon the question of whether or not he was a member. . . ." Having failed to delineate in any manner the question of judging "membership" either as a matter of proof or of definition, the court left it to the jury unguided and in arbitrary will to act and proceed as it might. Having failed to advise the jury on the probative effect of attendance and holding office, the charge invited the jury to roam at will through the maze of the evidence and select whatever satisfied their personal notions of what the membership relation consisted of.

Not the least important result was that the jury was permitted to find membership upon such uncertain bases as parallelism of action between petitioner and the Communist Party, or statements of ideological preference. He was a candidate for Congress on the Progressive Party ticket, working closely with and seeking the aid of the Communist Party in the campaign. [R. 100-101.]

As a union organizer he conferred with a Communist Party representative to discuss plans for strengthening his union with the help of the Communist Party. [R. 207-210.] Along with many other representatives of his union he worked to defeat the Taft-Hartley bill [R. 213-219] and to resist and seek the repeal of the legislation once enacted. [R. 224-227.] According to Terrazas petitioner urged his fellow union members to read a "Communist" newspaper. [R. 348.] Matusow said petitioner spoke in favor of the Stockholm Peace Appeal and of ending the Korean War, as well as endorsing a disarmament plan proposed by the Soviet Union. [R. 246-250.] Brooks related a front porch conversation wherein petitioner said he "was a Communist and proud of it.". [R. 201.]

By the instruction the jury could have found membership by any or all of this evidence alone and without relation to any other evidence. Indeed it could have based a finding of membership on any single part or any combination of parts of that evidence. That our contention here is not exaggerated is shown by the tests of parallelism or "following the line" formulated by the House Un-American Activities Committee and Attorney General Brownell referred to earlier. By such means the test of membership is transmuted from an "act of joining" into an ideological litmus applied to a sampling of a man's thoughts and conduct in public debate.

To the extent that the charge permitted the jury to reach its verdict on such evidence, it served grossly to mislead them. For that evidence has no probative force to establish membership. In *Bridges v. United States, supra*, at p. 834, instructions of law were especially approved declaring that membership in the Communist Party

could neither be proved nor constituted by mere parallelism of ideas and conduct or sympathy of viewpoint.

In our system the "traditional duty" of a trial court includes "guiding the jury by indicating the considerations relevant to the latter's verdict on the facts." *Bruno v. United States*, 308 U. S. 287, 293. It is the judge's "responsibility to give the jury the required guidance by a lucid statement of the relevant legal criteria." Upon this "depended" the discharge by the jury of its "responsibility for drawing appropriate conclusions from the testimony." *Bollenbach v. United States*, 326 U. S. 607, 612. The judge should "bring into view the relations of the particular evidence" (*Bird v. United States*, 180 U. S. 356, 361), "resolving the evidence, however complicated, into its simplest elements, and . . . showing the bearing of its several parts and their combined effect [lest] chance, mistake or caprice may determine the result." *Nudd v. Burrows*, 91 U. S. 426, 439.

These principles are not empty formularies. They reach deep into the very essence of our institutions. Ambiguity, critical omissions, or affirmative errors in instruction, when amounting to a failure fairly or accurately to guide and confine the jury by the standards of judgment created by the substantive law, license the jury to create its own standards of judgment and punishment, *ad hoc* and *post facto*, or leave guilt to utterly unguided chance or passion. Such a course violates fundamental constitutional rights and principles; there is at once a violation of substantive and procedural due process of law, an infringement upon legislative power, and a denial of right to a meaningful jury trial. The central safeguard against these results is firm observance of the principle that the jury must take the law from the court. These consider-

ations were reviewed at length in the definitive decision of this Court in *Sparf v. United States,* 156 U. S. 51.

> "Upon the Court rests the responsibility of declaring the law; upon the jury the responsibility of applying the law so declared to the facts as they, upon their conscience, believe them to be. Under any other system, the Courts, although established in order to declare the law, would for every practical purpose be eliminated from our system of government as instrumentalities devised for the protection equally of society and of individuals in their essential rights." (156 U. S. at 102-103.)

The trial judge in a criminal prosecution is "not a mere moderator" but is "the governor of the trial for the purpose of assuring its proper conduct and of determining questions of law." *Quercia v. United States,* 289 U. S. 466, 469; *Herron v. Southern Pacific Co.,* 283 U. S. 91, 95. No part of his task is heavier than charging a jury. This is not a mechanical process of mouthing formulas or legalistic "abracadabra." It is rather "the weightiest influence upon the jurors," serving to "guide their understanding." *Andres v. United States,* 333 U. S. 740, 765, Mr. Justice Frankfurter concurring.

Where, as here, the instruction purports to inform the jury on the meaning of a statute, lack of the requisite guidance partakes of the identical vice as vagueness in the statute itself. It "licenses the jury to create its own standard in each case." *Herndon v. Lowry,* 301 U. S. 242, 263. It constitutes an interpretation and application of the statute, sweeping within the ambit of proscription conduct which, until the moment of the verdict, no reasonable person could say was prohibited. *Musser v. Utah,* 333 U. S. 95, 97. It permits a judgment to rest equally upon conduct which government may not pro-

scribe as well as that which it is competent to punish. *Terminiello v. Chicago*, 337 U. S. 1, 6. The result, of course, is the very antithesis of our aim of a society ordered by law. The verdict rests on the motions of the jurors, unsupported by any prior pronouncement of standard as a general rule for all to observe. *Cf., United States v. Cardiff*, 344 U. S. 174, 176.

These conclusions give new content to the adage that ours is a government of laws not of men. For the vague instruction leaves it to the jury to set the standard, not the legislature or the courts. As this Court has observed, in those premises "jurors will be superior to the . . . legislature" and will possess "power to abrogate or to make laws nugatory." *Sparf v. United States, supra,* at pp. 70-71.

Moreover failure to secure an informed and understanding jury trial under instructions guiding and confining the jury by the applicable substantive standards of law, denies a defendant the reality and the lawful substance of a jury trial. Without submission of the issue of guilt under correct and adequate instructions there is no holding of a jury trial, and the constitutional right to such has been denied. The accused is entitled to the verdict of a jury fairly instructed. This cannot be replaced, as the court below attempted (226 F. 2d at 547), by the conclusions of an appellate court as to what can be spelled out of the record to support a conviction. *Bollenbach v. United States*, 326 U. S. 607, 613-615; *M. Kraus and Bros. v. United States*, 327 U. S. 614, 628; *Bihn v. United States*, 328 U. S. 633, 637-639; *Kotteakos v. United States*, 328 U. S. 750, 763-764; *Weiler v. United States*, 323 U. S. 606, 611; *Screws v. United States*, 325 U. S. 91, 107; *United Brotherhood of Carpenters v. United States*, 330 U. S. 395, 410.

(b) The Charge Permitted the Jury to Find Membership Solely on the Basis of the Pre-affidavit Evidence and Was Therefore in Conflict With This Court's Construction of the Statute in American Communications Assn. v. Douds, 339 U. S. 382, 413-414. It Violated the Presumption of Innocence and Permitted Drawing From Innocent Prior Membership an Arbitrary Inference of Continued Membership Having Criminal Consequences.

Ninety per cent of the evidence pertaining to petitioner's connection with the Communist Party relates to a period long prior to the date of the affidavit. Of this the earliest [Currie, R. 86] was four years before, and the latest [Ford, R. 109] was about nine months before the crucial date of April 28, 1950. It would be fair to say that the instruction invited a finding of membership on pre-affidavit evidence alone. The jury was told it "may consider" attendance at party meetings and holding party office. The only evidence dealing with these matters was pre-affidavit. The balance of the instruction, leaving the question of membership entirely at large, surely permitted the jury to rest its finding on pre-affidavit evidence alone. That evidence, whether considered in totality or in any combination of its parts, was in law unable to support the verdict.

The instruction contravened the statute as authoritatively construed in *Douds, supra*. There this Court held that past membership in the proscribed groups was no ba to signing the affidavit and serving as a union officer. The aim of the statute was "to forestall future dangerous acts" which might be committed by persons who continued as members of those groups. Thus it was held that ". . . members of those groups identified in §9(h), are free to serve as union officers if at any time they renounce the allegiances which constituted a bar to signing

the affidavit in the past. Past conduct, actual or threatened by their previous adherence to affiliations and beliefs mentioned in §9(h), is not a bar to resumption of the position . . . . there is no one who may not, by a voluntary alteration of the loyalties which impel him to action, become eligible to sign the affidavit." (339 U. S. at 414.) For these reasons the statute was declared not to be a bill of attainder.

Since past membership is not a bar to executing the affidavit and holding union office, past membership, standing alone, cannot constitute proof of false swearing.[20] Otherwise the statute as construed by this Court would be a trap. This Court's gloss upon the statute is a limitation upon the scope of the statute and therefore upon the liability created under it when combined with 18 U. S. C. 1001. In criminal cases the accused is entitled to jury instructions which set out correctly the limits of liability created by the statute, irrespective of whether a reviewing court would take the view that the evidence clearly satisfies those limitations. For the accused must be convicted upon the jury's appraisal of the facts under proper instruction. *United Brotherhood v. United States*, 330 U. S. 395, 409-410.

Implicit in the trial court's instruction permitting a finding of membership as of April 28, 1950, on the basis of past membership as old as nine months to four years, is a presumption of continuance of the status of member-

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[20]It is necessary to note here that in *Hupman v. United States*, 6 Cir., 219 F. 2d 243, upon which the court below so heavily relied, there was evidence that after signing the affidavit, the accused met with Party officials and accepted from them instructions to conceal his membership on account of his having signed. (*Idem* p. 247.) There is no such evidence here, and the *Hupman* case has no bearing on this issue.

ship once the same had been shown. It may be noted that the instruction would permit such a presumption to operate upon any single item of pre-affidavit evidence, no matter how slight or how remote. Notwithstanding the lower court's reliance upon what it described as "membership . . . over a period of years," petitioner's "many activities . . . in furtherance of its mission," "dedication so complete and conviction so deep" (226 F. 2d at 549), there was nothing in the trial court's charge that directed the jury first to find membership over a period of years or any of the other factors adverted to by the court below, before inferring membership on the crucial date. Currie's testimony alone would have supported the inference under the instruction.

This Court has had occasion to observe that the presumption of continuance is no magic amulet. It is only to aid reason, not to override it. The presumption is operative only when under the circumstances of the case it is reasonable. *Maggio v. Zietz*, 333 U. S. 56, 66. Here the circumstances make the presumption improbable and unreasonable. Assuming petitioner's membership in the Communist Party for some period prior to August, 1949, the continuance of that relation turned solely on his own volition. This Court can notice that late 1949 and early 1950 was a period of intense public feeling against Communists in this country, in which the very formation of the party was by a jury found to have been the product of a conspiracy to violate the Smith Act. *United States v. Dennis*, 2 Cir., 183 F. 2d 201,[21] aff'd 341 U. S. 494. Against this circumstance alone it can-

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[21] Judge Hand there noticed the nationwide antipathy to members of the party and its effect on the fairness of the trial. 183 F. 2d at 226.

not be said that the inference of continuance of this purely voluntary relation has any greater probability than its opposite. The inference being that weak it could not prevail even in a civil case. See *Cleveland C. C. & St. L. R. Co. v. Starks,* 58 Ind. 341, 359, 106 N. E. 646, 652.

But the controlling consideration is that under the circumstances of this case the very drawing of the inference of continuance displaces the presumption of innocence. Petitioner's past membership, if such there was, was innocent. That membership would become tainted or take on the dynamic quality of an element of the crime here charged only upon signing the affidavit. But proof that a purely voluntary relationship was maintained when lawful will not help prove that it was continued after it became unlawful or had criminal consequence. *Wolf v. United States,* 8 Cir., 259 Fed. 388, 393; *Haywood v. United States,* 7 Cir., 268 Fed. 795, 806-807; *Kammann v. United States,* 7 Cir., 259 Fed. 192, 194-195.[22] In effect the inference of continuance here unlawfully placed upon petitioner the burden of proving his innocence and this from facts that in and of themselves raise no sugges-

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[22] "We agree at once . . . that criminality can not be proved by proving innocence. . . . To illustrate: Take a time when malicious and premeditated homicide was not unlawful. During that time a person with premeditated malice takes the life of a human being by means of a certain poison. Because he has committed no crime, it is impossible that he should have had any criminal intent. Later a murder law is enacted. Under it the same person is charged with having taken, feloniously and with premeditated malice, the life of a human being by means of the same poison, presumptively he is innocent. Presumptively he intended, when the murder law was enacted, to respect and obey it. Against the presumption that he did not have the criminal intent to commit murder, the prior innocent homicide has no probative value." (*Haywood v. United States, supra.*) "But it cannot be presumed that a state of mind, entirely lawful at the time and not accompanied by expressions showing a willingness to violate law, will change into a criminal intent under a future statute." (*Wolf v. United States, supra.*)

tions of criminality. Proof of Communist Party membership by petitioner in August, 1949, and before, did not call for explanation because in terms of the charge here it had no "sinister significance." *Morrison v. California,* 291 U. S. 82, 90; *Tot v. United States,* 319 U. S. 463, 468-469. Nor can a burden of exculpation be cast on petitioner because he has "the better means of information." That rule applies only when the inculpatory inference from the fact proved (here past membership, wholly innocent) is a reasonable one. "But, as we have shown, it is not permissible thus to shift the burden by arbitrarily making one fact, which has no relevance to guilt of the offense, the occasion of casting on the defendant the obligation of exculpation. The argument from convenience is admissible *only where the inference is a permissible one,* where the defendant has more convenient access to the proof, and where requiring him to go forward with proof will not subject him to unfairness or hardship." (Emphasis added.) *Tot v. United States,* 319 U. S. at 469.

In sum, the operation of a presumption of continuance or the placing upon petitioner of a burden of exculpation is, in the circumstances of this case, bottomed upon utterly circular reasoning. That which is sought to be proved is membership as of April 28, 1950, with its consequences of criminality. Of this petitioner was presumed innocent. But this was permitted to be proved by evidence of long prior membership which was in law and fact innocent, and combined with no fact giving it criminal consequences. The instruction allowed presumed innocence to be overcome only by the presumed continuance of a lawful relation until it became unlawful. The inference was therefore unreasonable and impermissible as a matter of law.

The court below, 226 F. 2d at 549, sustained the judgment on the grounds that enough had been shown to impose on petitioner the burden of explanation. But what had been shown was innocent and without criminal consequences as a matter of fact and law. Under the *Tot* case no such burden could arise. The attempt to create it is as much circular reasoning as the effort to draw the inference of continuance.

(c) The Statute as Applied in the Instruction on Membership Was Rendered so Vague, Indefinite and Uncertain as to Afford No Ascertainable Standard of Guilt, and to Embrace Speech and Association Protected by the First Amendment.

We have shown that the court's instruction permitted a finding of membership as of April 28, 1950, only upon evidence of membership long prior to that date. On its face the statute requires a disavowal of membership as of the time the affidavit is executed, and the affidavit was in the present tense only. [R. 383.] As authoritatively construed, the statute (18 U. S. C. 1001 and 29 U. S. C. A. 159(h)) will not support a prosecution for false swearing based only on evidence of membership antedating the affidavit. Assuming petitioner's past membership as shown he could have made an "honest, untainted" oath on April 28, 1950.

Construed as it was by the trial court, however, the statute affords no ascertainable notice of its requirements. The statute becomes a trap for him who is so unwary as to rely on the plain meaning of its terms. It bears a hidden meaning not made manifest until the evidence is closed and the instructions given to the jury. Compare *Connolly v. General Constr. Co.*, 269 U. S. 385; *United States v. Cohen Grocery Co.*, 255 U. S. 81; *Herndon v. Lowry, supra.*

The lack of ascertainable standard is made evident by considering the absence in the charge of any definition of membership either in terms of a principle of law or evidentiary ingredients. For due process purposes we must view the trial court's construction of the statute in terms of the stiuation confronting one about to execute the affidavit. This Court has ruled that "no honest, untainted interpretation . . . is punishable." (339 U. S. at 413.) Surely it is reasonable for the potential signer to construe the affidavit word "member" according to the party's formal requirements of membership. This the more so if he is a past member who this Court has said is free to sign. Assume such a person is aware of these requirements, has continued friendly relations, cooperating with the organization on clearly non-proscribed objectives such as eliminating racial discrimination, objection to the Korean interyention, repeal of Taft-Hartley and dissemination of its newspaper. Because he no longer met the conditions of membership he could reach an "honest, untainted" conclusion that he was not a member and that he could with impunity sign the affidavit. An instruction to a jury that ignores the formal requirements and permits a finding of membership on the basis of a dictionary definition is for these reasons erroneous. *Fisher v. United States,* 231 F. 2d at 107.

The same conclusion must be reached concerning the charge here which ignores the formal requirements and permitted a finding of membership upon isolated and not necessarily related facts. Here the charge told the jury, "You *may* consider whether or not he attended Communist Party meetings, whether or not be held an office in the Communist Party . . ." (Emphasis added.) The jury was not told these were required criteria; they were told that it was permissive to consider these things and

therefore that they need not do so. But the question is whether, by the standard set in the charge, petitioner on April 28, 1950, about to put his name to the affidavit, could honestly have said, "Having attended meetings, having held office, knowing the conditions of membership and having terminated mine and ceased to comply with those conditions, I can honestly say that I am *not* a member." Patently he could have. The instruction fashioned out of the statute a trap to catch not simply the unwary, but also the advisedly honest man who answers as to the present by established criteria only to be adjudged by standards based solely on the past.

But this does not exhaust the sweep of the dragnet fashioned by the instruction. The jury was permitted to consider "other evidence consistent only with membership" and "all other evidence . . . which bears or may bear upon the question." [R. 416.] As we have shown this gave the jury leave to base its findings upon utterances and statements of ideology entitled to First Amendment protection and having no necessary relation to membership. Thus, his urging his union members to read a so-called Communist newspaper because it gave the truth about union matters [R. 348]; or his comments upon the Soviet disarmament plan. [R. 247.] A particularly aggravated instance is the testimony of Brooks that in 1947 petitioner said that "he was a Communist and proud of it." [R. 201.][23] Under the quoted language of the charge the jury could have found membership on such

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[23]The word "Communist" was capitalized by the court reporter, not by the witness. For all that appears in the evidence it could have been spelled with a small "c". Surely communists exist without party connection as well as democrats.

evidence whether standing alone or in combination with other evidence. Each of these is plainly a part of free discussion so necessary to the functioning of representative government. *Stromberg v. California,* 283 U. S. 359; *DeJonge v. Oregon,* 299 U. S. 353. The charge permitted the jury to attach criminal consequences to such discussion and to this extent established a standard which no reasonable person could perceive. *Winters v. New York,* 333 U. S. 507; *Terminiello v. Chicago,* 337 U. S. 1.

The impact of such a dragnet upon the marketplace of opinion must, in the circumstances of this case, have an especially damaging effect. For we deal here with officers and leaders of labor organizations. That by their nature such groups are a form of expression and that they give significant direction and content to the development of American opinion is hardly open to question. (See *United States v. C.I.O.,* 335 U. S. 106, 121; *Thomas v. Collins,* 323 U. S. 516; *Hague v. C.I.O.,* 307 U. S. 496.) The statute here is frankly aimed at excising from union leadership persons identified only by association or opinion. In addressing itself to the constitutional aspects of this problem, this Court has expressed a willingness to assume that "Communists . . . carry on legitimate political activities." (*Douds,* 339 U. S. at 393.) In a not dissimilar situation it has held "Membership may be innocent." *Wieman v. Updegraf,* 344 U. S. 183, 190.

The operation of the statute here, consistently with our constitutional protections of expression and association, calls for the most delicate dissection with instruments of unexampled nicety. Where the proscribed organization carries on legitimate political activities, it is inevitable that the activities and utterances of its members will

closely resemble those of other groups. No organization concerned with politics operates in a vacuum so complete that its interests do not touch upon areas in which others are concerned. The effort to show membership or affiliation by parallelism of utterance or activity on causes must inevitably extend far beyond the groups and persons at which the statute is aimed. So broadly applied it is given a censorial effect upon the conduct and interests of the unions themselves as well as their leadership. No officer of a union will encourage his organization to pursue a cause in which Communists are active, nor will he personally pursue it, if such may become a test of the truthfulness of his non-communist affidavit.

We do not reach at bar whether the purposes and objects imputed to membership in *Douds* are consistent with the pronouncements of this Court in *Wieman*. We do confront the necessity of giving to both membership and affiliation contours and dimensions that embrace only the constitutionally proscribable. The imperatives of free political expression demand that both these relations be "narrowly drawn." As to membership they indicate the need for a test based upon the accomplishment of an "act of joining" based either upon compliance with the organization's formal requirements or upon carefully defined conduct manifesting that joining and no more. The very fact that in *Douds* this Court approved the imputation of proscribable purposes to the membership relation, dictates that the relation be carefully proved in the organization's terms and not in terms of perfectly lawful as well as constitutionally protected conduct.

So also, as will be shown in Point Three, *infra*, as to affiliation the rule of *Bridges v. Wixon* is designed to define a relation within the competence of the Congress to proscribe.

It is an essential to the recognition of the constitutional guarantees. Without it the concept affiliation becomes an enormous dragnet virtually self-applying. American radicalism, including the Communist sector, has never been so divorced from national political currents that it has not espoused causes that others have furthered and worked with many other individuals and groups. The trial court's instruction fashioned an ideological test incapable of workable limitation. We need only be reminded of the cry, "Twenty years of treason." The practical result, not simply the logical implication, of such an application of the statute is that before speaking and joining union members and officers must give each other ideological loyalty tests.

(d) The Instruction Was Vague and Misleading in Connection With the Requirement That the Jury Determine, and Confine Its Judgment to, the Accused's Meaning of the Critical Word Member.

The crime of which petitioner was accused is in at least one critical respect identical with perjury. Falsity is the essential element of each. This, in each, lies in the difference between the oath given and the accused's state of mind. The statute here speaks of "making and using any false writing or document *knowing* the same to contain any false . . . statement." (18 U.S.C. 1001.) The perjury statute condemns swearing to a matter "which he does not believe to be true." (18 U. S. C. 1621.) This Court has held that in a prosecution involving a non-Communist affidavit the question is whether "the affiant acted in good faith or knowingly lied." *Douds, supra*, at p. 413. The Second Circuit has assimilated a false swearing case under section 1001 and perjury under section 1621 as respects the element of contradiction be-

tween the accused's oath and state of mind at least for purposes of delineating the type of proof by which state of mind will be proved. *United States v. Remington*, 2 Cir., 191 F. 2d 246, 249, cert. den. 343 U. S. 907. Judge Bazelon of the District of Columbia Circuit has expressed the view that the identity of the element of falsity in the two offenses compels the application of the two witness rule to section 1001 prosecutions where based upon allegedly false oaths.[24] In *Fisher v. United States, supra*, the Ninth Circuit held to the contrary, conceding that "the question is a close one." (231 F. 2d at 106.)

The gist of the offense being the conflict between the oath as to a fact and the oathmaker's knowledge as to that fact, an essential inquiry is the accused's understanding of the terms used. *Fotie v. United States*, 8 Cir., 137 F. 2d 831, 842; *Seymour v. United States*, 8 Cir., 77 F. 2d 577, 582; *Luse v. United States*, 9 Cir., 49 F. 2d 241, 246; *Hilliard v. United States*, 5 Cir., 24 F. 2d 99.

The import of the foregoing is that in a claim of perjury or false statement there must be (1) a demonstrated and defined meaning, searched for and found by the jury, (2) this must be found as well to be the *defendant's* meaning, and (3) so understood and meant, the statement made must be wilfully false. Falsity in any other or abstract sense is not the issue. The offense "consists . . . not in swearing falsely and corruptly." "[If the accused] swore honestly to a fact or belief, with probable cause, *according to his own lights*, to the best of his be-

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[24] *Gold v. United States* (C. A. D. C.) No. 12352, opinion filed April 19, 1956. Apparently unreported. Copy set out in Appendix III. Gold's conviction for filing a false non-communist affidavit was affirmed by an equally divided court. So far as we can ascertain Judge Bazelon was the only member of that court to file a "statement of his vote and his reasons".

liefs, he is not guilty of perjury, though his oath was really untrue." (2 Wharton's Criminal Law, 12th ed., pp. 1782 and 1786.)

Where words are ambiguous and vary in meaning to courts, lawmakers, Congressional Committees, and legal periodical writers, as at bar, it is reasonable to apprehend they are and were ambiguous in meaning, and even variable, to the jurors below and to the accused. Yet no instruction told the jury that the term "a member" must be found by them to have one meaning, an agreed meaning, and this, the *defendant's* meaning, before they might convict on finding falsity, if such they should. And it is of the essence of such a trial that this be made plain to and be apprehended by the jury, else the jurors act in finding guilt without concept or understanding of the crux and core of the crime charged.

On this score the charge is in hopeless confusion and conflict. At one point the jury was told:

> "The questions for the jury to determine are:
>
> "First, whether the alleged statements of the defendant if he made them are false.
>
> "Second, whether the defendant knew *or should have known* that these alleged statements were false.
>
> "Third, whether the alleged statements of the defendant were made willfully—bearing in mind the instruction on the element of willfullness that I have given you in these instructions." (Emphasis added.) [R. 415.]

On its face this language not merely failed to require that the jury search for and respect the *defendant's* meaning, and convict by it only, but, to the contrary, it invited predication of guilt upon negligence of the defendant, not knowledge, nor by *his* meaning of the crucial

term "member." Nowhere in its instructions did the court advise the jury it must seek for and abide by only the meaning of the affidavit term to the defendant. [R. 408-420.]

Earlier in the charge the jury was told that one of the "essential elements of the crime" was that defendant made the statement "knowing it to be false." [R. 413.] It appears that the court meant by this that the statement of the defendant must have been made deliberately and not by inadvertence or negligence. [R. 414, first, second and fifth paragraphs.] In none of this language does the instruction require the jury to find what meaning of the term "member" the defendant did in fact entertain at the time. But in any event these passages are hopelessly obscured by the language quoted earlier. For, having said that "knowingly" excludes negligence, the charge then tells the jury to determine "whether the defendant *knew or should have known*" of the falsity. Negligence as a basis of guilt, twice in terms excluded, was thus inserted into the case.

The quoted excerpt appears to be an effort by the court to descend from the general principles explained at R. 413-415 to concrete application in terms of the jury's specific findings to be made—"questions for the jury to determine." It was in thus concretising that the offensive language "or should have known" is found. This of necessity says that the jury could find that membership had a meaning separate from the petitioner's awareness and that he falsified if under the circumstances of the case he "should have known" that meaning. Whatever had been said about knowing falsity previously, it was reduced to that practical working term for verdict purposes. This conclusion is reinforced by the fact that

when the court came to the application of the reasonable doubt principle to various aspects of the case it did not advise the jury that a reasonable doubt as to petitioner's knowing falsity required acquittal. [R. 418.] So construed, the charge misled the jury on the key issue of knowing falsity.

Moreover, if not misled, the jury was surely at least confused. No body of laymen could be expected to derive reasonable guidance on this central issue of the case.

POINT THREE.

The Court Below Erred in Approving the Rulings of the Trial Court Concerning Instructions on the Issue of Affiliation.

The instruction given was set out *ante*, p. 16. The instruction requested by petitioner will be found at R. 463-464.

(a) The Trial Court Gave the Jury No Legal Guide on the Issue of Affiliation.

Ignoring for the moment the portion of the instruction stating affiliation may be equated entirely to membership, and considering only the remainder, it is plain that this instruction in net effect was no instruction at all, certainly no instruction of definition. Affiliation is described merely and exclusively in terms of *synonyms*, and these of the vaguest contours. Such synonyms are supplemented only by the broad homily, without confining meaning whatever, that affiliation is "something less than membership but more than sympathy." In substance this was no instruction of definition at all. Also, the Court respecting affiliation, just as in its instructions respecting membership, failed totally to give the jury any guidance, reasonable or fair or at all, as to the manner and mode

in law for evaluating and weighing the evidence received upon the issue. It left the issue wholly at large upon all the evidence that had been offered in the case.

In consequence of the foregoing the charge respecting affiliation failed to give the requisite guide to the jury on that issue. The analysis made in subdivision (a) of Point Two, *ante*, applies with equal force here. As in the instructions affecting membership, the instructions given and refused constitute at once a denial of due process, both substantive and procedural, an invasion of legislative power vested in the Congress, and a denial in substance of the constitutional guarantee to a jury trial. Here, as there, the jury was cast loose utterly unguided, with no standards of law measuring and determining the crucial term that marked the charged offense, or for weighing and evaluating in informed manner the evidence respecting such, and without criteria to direct them through the "maze of facts before it" (*Bollenbach v. United States, supra*, p. 613.)

In addition, the issues of membership and affiliation were hopelessly blurred by that portion of the dictionary definition incorporating the otherwise undefined term membership in the words "to unite or attach such as a member . . ." [R. 417.] This incorporated membership in totality into affiliation as a permitted (if not directed) meaning of the latter. In these lights the charge that "affiliation . . . means something less than membership . . ." is reasonably capable of being understood as meaning that whatever would prove or constitute membership would assuredly prove or constitute affiliation, and with room to spare. Absent such a meaning the last quoted clause directly conflicts with the dictionary definition in the instruction. In total the effect could have

been little short of bewildering upon a conscientious jury; to citizens less aware of their responsibilities, it was no more than a suggestion that, having read the indictment, they were to decide whether the accused is guilty.

(b) To the Extent That the Charge Contained Any Criteria of Affiliation, They Were in Conflict With Those Defined by This Court in Bridges v. Wixon, 326 U. S. 135.

In a portion of the trial court's language, derived from Webster's Dictionary, the verb "affiliate" is said to mean "to connect or associate oneself with; to adopt, hence usually to bring or receive into close connection; to ally . . ." [R. 417.] It lacks two important elements required to afford First and Fifth Amendment certainty. These are (a) relationship of continuous and mutual obligation, and (b) a working alliance to further proscribed objectives.

Regarding the continuity and mutuality of obligation necessary to constitute affiliation, this Court, by its own formulation or by adopting others', has given heavy emphasis to this limiting factor. It has referred to "'. . . a status of mutual recognition that he may be relied on to cooperate with the Communist Party on a fairly permanent basis . . .'" The relationship must have "'. . . an element of dependability upon which the organization can rely which, though not equivalent to membership duty, does rest upon a course of conduct that could not be abruptly ended without giving at least reasonable cause for the charge of a breach of good faith' . . ." It approved an analogy to the corporate fields and to charitable and political organizations, "'. . . not the casual affinity of an occasional similarity of objective, but ties and connections that, though less than that complete control which parent possesses over subsidiary, are

nevertheless sufficient to create a continuing relationship that embraces both units within the concept of a system. In the field of eleemosynary and political organization the same basic idea prevails' . . ." Bonds of cooperation and alliance do not constitute affiliation unless they "'entail continuing reciprocal duties and responsibilities.'" (326 U. S. at 142.)

The charge utterly omitted these requisites. It gave no quality to the words "connect" or "associate." "Close connection" carried no measure of the degree of closeness. Particularly lacking are the ingredients of continuing reciprocal duties and responsibilities as well as dependability and permanence. Wanting in these respects, the language of the trial court's charge was more likely to be read as embracing the very "*ad hoc* cooperation" and "friendly associations" this Court's definition was expressly meant to exclude. (326 U. S. at 142-143.)

An instruction virtually identical with that here at issue, and in a similar case, was found wanting on these grounds alone in *Fisher v. United States, supra*:

> "The question is whether the definition given by the trial judge was sufficient to get across to the jury the idea of a continuing reciprocal relationship involving duties and responsibilities. The proper test to apply is whether one could be convicted under the instruction which was given who was only in sympathy with the aims of the Communist Party, and who occasionally would, say distribute literature for it but without any obligation to do so or to continue to do so. He would have connected or associated himself with the Communist Party. He would be its ally . . . However, under the test of affiliation laid down in *Bridges v. Wixon*, he could honestly answer that he was not affiliated with the Commu-

nist Party. If the test of affiliation given in that case is still applicable, and unless the Government can distinguish the case, this instruction is erroneous." (231 F. 2d at 108.)[25]

Further, by this Court's standards even a relation of the closeness and dependability and with the mutuality of duty so far elucidated does not constitute affiliation. For such regularized cooperation with an organization in its wholly lawful objectives is not affiliation. (326 U. S. at 143.) The cooperation, however close, "must evidence a working alliance to bring the proscribed program to fruition." (326 U. S. at 146.) The charge is silent on this subject. By its words the jury was free to find connection or association or alliance for any lawful objective and by that token conclude that affiliation was shown.

The trial court could have included, and the court below should have required, a definition of the proscribed purposes which had to be the object of the affiliation described in section 9(h). In the *Douds* case, *supra,* this Court said that the "purpose" of section 9(h) was "to remove . . . the so-called 'political strike.'" (339 U. S. 388.) The Congress had reasonably found that "Communists and others proscribed by the statute had infiltrated union organizations . . . to make them a device by which commerce and industry might be disrupted when the dictates of political policy required such action." (326 U. S. at 389, see also 393.) Further it was held that the end sought by the legislation was the elimination from union leadership of persons who, be-

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[25]So far as counsel can learn the government has not sought review of that decision in this Court.

cause of their membership or affiliation or belief or support, are likely to resort to the political strike. (339 U. S. at 392-393, 403-404.) It was therefore to this end that the affiliation proscribed in the statute had to be directed. It was concerning affiliation of this kind that the jury should have been instructed.

Lacking this requisite the charge gave to the concept of affiliation the "dubious scope"[26] of which Mr. Justice Frankfurter spoke in the *Douds* case. (339 U. S. at 420.) For it opened the door to consideration by the jury of association for "wholly lawful activities." And on this score there is a striking similarity between the affiliation evidence in the case at bar and the evidence held in *Bridges v. Wixon, supra*, not to make out affiliation. There this Court rejected as insufficient Bridge's cooperation with "Communist groups for . . . lawful objectives" (326 U. S. at 145); here Jencks through his union and political party worked closely with the Communist Party upon such "wholly lawful activities" as the elimination of discrimination against Mexican-Americans and the defeat of Taft-Hartley. [R. 101, 214, 223, 224.] There Bridges advised his members to read "Communist literature" because it more truthfully reported labor news

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[26]The successive conflicts of definition of the term among administrative officers and courts in the *Bridges v. Wixon* litigation (49 F. Supp. 292, 307; 144 F. 2d 927, 938, 941; 326 U. S. 135, 142 ff.) and the observations of Judge Major dissenting in *Inland Steel Co. v. National Labor Relations Board*, 7 Cir., 170 F. 2d 247, 262, but serve to set in stark relief the anomalous position of the prosecutor here who had to ask the jury to convict of a crime which he himself could not define: "The Court will charge you—there is some difference, I am not too sure what myself—but there is some difference in being a member of a party and being affiliated with it. They say, and I think the Court will charge you, that affiliation is something less than membership but is not just a sympathy with it. You've got to kind of work at it, or something." [R. 459.]

(326 U. S. at 146); here petitioner did the same. [R. 348.] Petitioner's associations are always described in the testimony as "Communist meetings" or attended only by persons "known" by the witnesses to be Communists. We have above shown (Point Two, *ante*) that this evidence has no probative force to show membership. But it does show association with others at least for the purposes discussed at the meetings. In all cases these were "wholly lawful"—*e.g.*, veterans affairs, Currie [R. 86-89]; Progressive Party or Mexican-American affairs, Ford [R. 100-101, 101-102, 109-110]; affairs of petitioner's union including opposition to Taft-Hartley, support of the Progessive Party, Peterson. [R. 213-219, 224-227.]

The existence of such evidence in the record made imperative a charge defining affiliation in accordance with the standards declared in *Bridges v. Wixon*. Lacking this, section 9(h) would be given so broad a sweep as to embrace ideas, program and utterances protected by the First Amendment. (326 U. S. at 148; compare *Stromberg v. California*, 283 U. S. 359; *Thornhill v. Alabama*, 310 U. S. 88.) So applied the statute would define no ascertainable standard of guilt and operate as a pervasive censorship of trade union activity and expression. *Herndon v. Lowry*, 301 U. S. 242; *Winters v. New York*, 333 U. S. 507; *Thornhill v. Alabama, supra.*

(c) The Instruction Permitted the Jury to Find Affiliation Solely on the Basis of the Pre-affidavit Evidence and Was Therefore in Conflict With This Court's Construction of the Statute in the Douds Case, 339 U. S. 382, 413-414.

The affiliation instruction leaves it to the jury to find affiliation as of April 28, 1950, "from all of the evidence that has been offered in this case." [R. 417.] One of the respects in which such a charge left the question at

large was that upon either all the evidence of the pre-affidavit period or any portion or combination of portions thereof, the jury could have made its finding of affiliation. This charge, then, suffers all of the infirmities analyzed in subdivision (b) of Point Two, *ante*, and for the same reasons.

(d) The Instruction Failed to Require the Jury to Determine and Limit Its Finding to Petitioner's Meaning of the Critical Word Affiliate.

On this score the affiliation instruction, both by its own obscurity as well as by its link with the "questions for the jury to determine" [R. 415], is defective and erroneous in the same respects and for the same reasons as the membership instructions. All that was said in subdivision (d) of Point Two, *ante*, applies with equal force here.

Petitioner when signing the affidavit well might have reasonably and honestly concluded that speech, advocacy and association touching lawful subjects only would not involve him in affiliation with the Communist Party no matter how close the parallel between his and the party's position or how frequently he may have cooperated with party representatives on such matters. This the more so as to such speech and association carried on long prior to the date as of which he foreswore affiliation. This Court has evinced a profound solicitude to prevent the imputation to individuals of the purposes of a group with which he is associated, and to that end repeatedly required specific proof of personal knowledge. "Membership may be innocent." *Wieman v. Updegraf*, 344 U. S. 183, 190; *Schneiderman v. United States*, 320 U. S. 118, 136, 154-155. So also affiliation, and the opposite must be proved. *Bridges v. Wixon, supra.* The failure to require the jury to find on this score was fatal.

POINT FOUR.

The Court Below Erred in Affirming the Refusal of the Trial Court to Instruct the Jury, as Requested, to Approach the Testimony of the Paid F.B.I. Informants Herein With Caution and to Weigh It With Great Care.

The contention here is that in light of the posture of the record as it stood at the time the instruction was requested, and in view of considerations of public policy affecting the administration of criminal justice in the federal courts, it was reversible error to fail to furnish the jury with standards necessarily required in weighing the credibility of the paid professional FBI informants.

The trial judge instructed the jury that the credibility of these professional informers was to be measured by criteria applicable to ordinary witnesses [R. 419], adding only that the jury could "consider" the circumstances that the witnesses Ford and Matusow "received money for services and expenses in furnishing information" to the FBI. [R. 418.] The trial judge refused to instruct the jury, however, that they should approach such consideration of the testimony of these professional informers with "caution" and weigh the testimony "with great care." [R. 460.][27]

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[27]Dictionary definitions of the word "caution" include: "to give notice of danger; to warn; an exhortation to wariness; careful attention to the probable effects of an act, in order that failure or harm may be avoided." *Webster's Int. Dic.* (2nd ed.). The word "great" means: "considerable in degree, as to use *great* caution." The definition of the word "care" includes: "to be on one's guard; serious attention of mind; heed; caution; concern; regard; heedfulness; watchfulness; pains; as take care."

It is submitted that the refusal of the trial judge to instruct as requested by petitioner was harmful error. This view is supported by the following considerations:

1. The testimony of the professional informers was plainly intended to bolster "a weak case." *Fiswick v. United States*, 329 U. S. 211, 220. There was no direct evidence establishing the commission of the offense by this petitioner as alleged in the indictment. As we have shown, the case against petitioner was bottomed entirely upon tenuous circumstances, with inferences piled upon inferences, with unexplained gaps in the testimony involving salient periods of time before and after the date of filing of the affidavit—and all under a legal theory which relied heavily upon untenable presumptions, ridden figuratively by the prosecution backwards and forwards in order to appear to be carrying the essential burden of proof. Conviction here depended largely upon conjecture and guesswork, suspicion and supposition, elements ordinarily insufficient to justify a verdict of guilt against an accused. 2 Wharton, *Criminal Evidence* (11th ed.), Section 922, p. 1604.

2. The case herein lies in fields in which there is a traditional skepticism and wariness towards the accusation—where the offense, serious in nature, is so easily charged, and the negative is so difficult to be proved, that the accusation should be clearly and fairly made out under appropriate legal safeguards.

The offense, if committed, smacks darkly of false swearing and fraudulent concealment, of sedition and subversion. See, *American Communications Ass'n, C.I.O. v. Douds*, 339 U. S. 382, 388-89. The affidavit requirement in the statute affects officers of trade unions and the rights of unions to use a governmental facility in controversies

with employers or rival trade unions. In such milieu, the opportunities for vindictive and self-interested accusations are extremely great. Here the over-zealous prosecutor, the mercenary informer, the unreconstructed employer and the ambitious rival find the opportunity for coercive and unfounded accusations. See, *Colyer v. Skeffington,* 265 Fed. 17, 26, 69 (D.C. Mass., 1920); May, *Constitutional History of England* (1880), vol. II, pp. 275-6; Commons, *History of Labor in the United States* (1918), vol. I, p. 403; vol. II, pp. 195-97, 337, 339, 415-16; Chafee, *Free speech in the United States* (1941), pp. 215-218, 277-80, 489-90. It is here on the contemporary scene that "spies and informers" find "rewards far more tempting than truth." Mr. Justice Black in *American Communications Ass'n, C.I.O. v. Douds, supra,* p. 447.

Nor should it be overlooked that the accusers in cases involving alleged Communists come wrapped in an aura of patriotism and righteousness most difficult to dispel before a jury itself charged with deep-seated emotions and passions. "Curiously enough, the political informant, spy, or agent provocateur is not now regarded with the same opprobrium as his brother who participates in other types of crime. Public opinion being what it is, his credibility is at a premium. His veracity count exceeds that of his more orthodox and less eccentric fellows. He may admit to all kinds of past knavery and mendacity but the greater his self-debasement the greater his claim to belief. That he now acts from patriotic motives is conclusively presumed." Donnelly R. C., *Judicial Control of Informants, Spies, Stool Pigeons, and Agent Provocateurs,* 60 Yale L. J. 1091, 1126 (1951). See also, Chafee, *The Blessings of Liberty* (1956), pp. 95-7. With the

scales thus weighted, it does not appear to be unfair to urge that the trial judge here was in error in failing to give the jury the requested cautionary instruction.

3. In this case, moreover, the nature of the evidence adduced and the ruling of the trial court increased the opportunities for the fabrication of their testimony by the professional informers. As we have shown, the case was tried under the vaguest and most unconfined definitions of the key words in the statute—"membership" and "affiliation" in the Communist Party. The "act of joining" was not made crucial to the prosecution's proof, and the state of mind of the petitioner was not premised on his own understanding and knowledge. The testimony of the informers was not confined; and they were left free to give full vent to their imagination, to produce the conviction upon which their continued employment so largely depended.[28] The informers were, in short, under the theory of the case below, permitted "enormous power to imagine words which were never said." Chafee, *The Blessings of Liberty* (1956), p. 97.

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[28]Note for example the prosecutor's question to Matusow, ". . . did Mr. Jencks, in those conversations identify himself as a Communist Party member?" When the trial judge confined the question to "whether or not Jencks *said* whether he was a Communist," the prosecutor immediately withdrew the whole matter. [R. 251-252.] In his trial testimony Matusow said that Jencks had stated he would take the "do-day" notion back to his "fellow Party members." [R. 246.] In recanting he testified that neither he nor Jencks mentioned the Communist Party in relation to "do-day". [H. 39, 40.] Matusow, at the trial, described Jencks' lecture concerning the "Communist-sponsored" Stockholm Peace Appeal. [R. 247.] At the hearing he said the words "Communist sponsored" were his embroidery. [H. 44.]

Similar inflation of fact was attempted with Ford. Perhaps the most blatant was the interrogation about whether Jencks was ever "replaced" or "disciplined" in his party position. [R. 115, 119, 133.] On analysis the testimony is meaningless (see *ante*, p. 43), but it creates a plausible surface appearance.

In addition, the actual evidence given by the informers was the weakest kind of testimony and ordinarily suspect. In the crucial post-affidavit period, reliance was necessarily placed entirely upon extrajudicial oral admissions assertedly made by petitioner to Matusow—admissions, it should be noted, not of membership in the Communist Party, but utterances from which such admissions were arbitrarily inferred. In the immaterial period prior to the filing of the affidavit, the informer Ford relied on the stock-in-trade of the professional witness—"closed communist meetings"—the last of which meetings was nine months before the filing date and from which evidence the inference of petitioner's membership in the Party was drawn and added to the presumption that the membership continued to the filing date in order to make out a case. (See, *Statement of Case, ante*, pp. 6-8.) See, *United States v. Ross*, 92 U. S. 281. Professor Wigmore states that "there is a general distrust of testimony reporting any extrajudicial *oral statements* alleged to have been made, including a party's admissions." *Evidence* (3rd ed.), vol. IV, Sec. 1056, p. 17. The learned author adds: ". . . . the great possibilities of error in trusting to recollection-testimony of oral utterances, supposed to have been heard, have never been ignored; but an antidote is constantly given by an instruction to the jury against trusting overmuch to the accuracy of such testimony" *op. cit.*, vol. VII, p. 468.

4. The requested instruction was neither novel nor unknown to judicial experience. In situations where the motives for fabrication of testimony were even less clear than in the instant case, courts have unhesitatingly given a solemn cautionary instruction to the jury. In the case of accomplices, for example, it is true that a motive to

fabricate testimony arises from the hope of lesser punishment or immunity, but at the same time, the accomplice is accusing himself and in that respect is "burning his bridges behind him." The regularly employed police officer who acts as an undercover agent usually holds his job whether or not a conviction is obtained in a pending case. The same is true in varying degrees with all regularly employed persons engaged in crime prevention. Yet, even in all such cases, the likelihood of false accusation and the possibilities of injustice to an accused have led the courts to warn the jury to weigh such testimony with caution. *Fletcher v. United States* (C.A. D.C.), 158 F. 2d 321; *Cratty v. United States* (C.A. D.C.), 163 F. 2d 844; *Fisher v. United States*, 9 Cir., 231 F. 2d 99; *Freed v. United States* (C.A. D.C.). 266 Fed. 1014; *Hostetter Co. v. Bower* (C.C. N.Y.), 74 Fed. 235; *Lett v. United States*, 8 Cir., 15 F. 2d 686; *Johns v. United States*, 10 Cir., 227 F. 2d 374. See also, *District of Columbia v. Clawans*, 300 U. S. 617, 630.

But here we deal with a different and distinct class of spy or stool pigeon. The employment here, although extended, is temporary in nature, casual and special. Far different problems of credibility are presented. These informants are frequently of doubtful character, their continued employment depending upon the number of convictions obtained. They are under great temptation to commit perjury and fabricate evidence, a temptation they are not likely to withstand. Donnelly, *Judicial Control of Informants, supra*, p. 1121. Unless they continue to produce evidence of a "Popish Plot" or a "Jacobin Cabal," they are out of work. Claude Bowers recently stated: "The paid informer informs for money. It is his business. If he finds nothing on which to inform, his business

suffers and his revenue is cut off; but if he has an active imagination and no conscience, he can manufacture evidence and count on the continuance of his revenue." *Jefferson and the Bill of Rights,* 41 Va. L. Rev. 709, 721 (1955).[29]

5. Specifically, in the case herein, all of the elements aforesaid combined to make the giving of the requested instruction a prime necessity. Moreover, other factors, implicit in this case, should be noted. The evidence of the witnesses Ford and Matusow, with respect to the separate matters to which they testified, was entirely uncorroborated. Indeed, there was no place in the testimony of any witnesses to support the testimony of any other witness that the incidents described by the latter actually occurred. Matusow's testimony concerning the critical post-affidavit period was legally barren of any support. Ford's own pre-1949 testimony was supported by none of the other witnesses, all of whom testified to conduct or utterances of petitioner at far remote times and places and of the vaguest and most insubstantial character. (See, Statement of the Case, *ante,* pp. 6-11.) The short of the matter is that Ford and Matusow were uncorroborated informers. See, *Arnold v. United States,* 10 Cir., 94 F. 2d 499, 505-8.

They were also highly paid professional informers, as the record makes plain Ford, R. 203; Matusow, R. 311-319. The case against petitioner depended substantially

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[29] "The testimony of the informant and the temporary spy or stool pigeon clearly should be scrutinized with care. If a defendant requests a cautionary instruction in regard to their testimony he should get it and a refusal to so charge, where there is no corroboration, should be reversible error." Donnelly, *Judicial Control of Informants, supra,* p. 1122.

upon the testimony of these two witnesses, and in turn the usefulness of these paid informants depended entirely on their ability to make out a case. Their own advantage was clearly a strong motivation for their role as witnesses.

Further, since "judicial supervision of the administration of criminal justice in the federal courts implies the duty of establishing and maintaining civilized standards of procedure and evidence" (*McNabb v. United States,* 318 U. S. 332, 340), this Court cannot disregard, it is respectfully submitted, the notorious character of the witness Matusow. In the eyes of the public and agencies of government alike, Matusow has become the symbol of the cult of the "paid informer," with all the aversion and disdain which this appellation entails. See, *United States v. Flynn,* 130 F. Supp. 412 (D.C. N.Y., 1955), opinion of Dimock. J.; Matusow, *False Witness* (1955); *Hearing before the Subcommittee of the Senate Committee on the Judiciary to Investigate the Administration of the Internal Security Act,* S. Res. 58, 84 Cong., 1st Sess. (1955); *Editorial,* New York Times, February 5, 1955. And see, N. Y. Times, February 1, 1955—"Anti-Red Witness Confesses He Lied"; N. Y. Times, Feb. 16, 1955—"Matusow Admits Faking Blacklist"; N. Y. Times, Feb. 17, 1955—"Matusow heard on Oxnam Views"; N. Y. Times, Feb. 18, 1955—"Matusow Study Widened By U. S."; N. Y. Times, March 3, 1955—"Matusow Admits Lies Against 244."

Before this very Court, the stamp of perjurer was placed on the witness Matusow without denial by the United States. *Communist Party of the United States v. Subversive Activities Control Board,* 351 U. S. 115, 121. This Court returned the "tainted" record to the Board despite the Board's statement that "we have considered

that certain of [the Attorney General's] witnesses fall into the category of 'informers' and we have scrutinized their testimony accordingly, *supra*, p. 123, n. 5. Moreover, on remand, the allegations with respect to Matusow remained undenied by the United States, and his evidence was stricken from the record by the Board, the Board declining to hold a further hearing because "as to Matusow it would avail nothing as the board has previously ruled that his credibility was such that it would disregard his testimony *in toto*." N. Y. Times, Aug. 12, 1956.

Justice cannot satisfy the appearance of justice, it is respectfully submitted, if a conviction in the federal courts is permitted to rest on the testimony of this witness without even a warning to the jury at the trial to weigh this informer's testimony with great care.

6. The public, as well as this Court, have a particular interest in the question presented here. No man is safe from the process of informing, especially when questions of a man's personal life, of his thoughts, opinions or political activities are under scrutiny. "Here is where employment of the informer may become dangerous to individual rights and liberties. The informer smacks of the police state; and we think that most Americans instinctively shrink from his use." *Editorial*, N. Y. Times, July 8, 1954. There is virtually no protection against the uncorroborated charges of these paid informers. The results of their accusations are devastating to the accused. Their threatened accusations are the easiest of blackmail methods. They virtually set the community in dissolution "where each man begins to eye his neighbor as a possible enemy. . . ." Hand, L., *The Spirit of Liberty* (1953), p. 284. The public, therefore, has a great interest

in preventing the dangers which flow from the unfettered activities of these paid professional informers.

Such public interest, and the due administration of justice, should be safeguarded by this Court. The balance between enforcement of the law and the protection of an accused from fabricated accusations should at the very least be struck by requiring in a case such as the one herein a caution to the jury to scrutinize the testimony of a paid informer with great care. This Court cannot disregard, it is respectfully submitted, the dictates of a history which bespeaks a volume of logic. The condemnation of the political informer is the condemnation of the civilized world throughout the ages. "The tale-bearer shall defile his own soul, and be hated by all." *Ecclesiasticus*, XXI, 31. For the medieval period, see Lea, *A History of the Inquisition of the Middle Ages* (1922), vol. I, pp. 371, 387; vol. III, p. 191. For English history, see May, *Constitutional History of England* (1880), vol. II, pp. 275-6. For the Alien and Sedition period in American history, see Miller, *Crisis in Freedom* (1951), p. 53. For the period of the 1920's, see Chafee, *Free Speech in the United States* (1941), pp. 215-218, 277-80, 489-90.

Moreover, there is involved herein by reason of all the aforesaid a serious question affecting the true administration of criminal justice in the federal courts. A decent regard for the "duty of courts as agencies of justice and custodians of liberty" (*McNabb v. United States*, 318 U. S. 332, 347) forbids the conviction of an accused upon the evidence of a professional paid informer without warning to the jury to weigh the testimony of the witness with great care. "Zeal in tracking down crime is not in itself an assurance of soberness of judgment. Disinterestedness in law enforcement does not alone pre-

vent disregard of cherished liberties. Experience has therefore counseled that safeguards must be provided against the dangers of the overzealous as well as the despotic." *McNabb v. United States, supra*, p. 343. Only recently this Court added: "The untainted administration of justice is certainly one of the most cherished aspects of our institutions. Its observance is one of our proudest boasts. . . . Therefore, fastidious regard for the honor of the administration of justice requires the Court to make certain that the doing of justice be made so manifest that only irrational or perversive claims of its disregard can be asserted." *Communist Party v. Subversive Activities Control Board*, 351 U. S. 115, 124.

For all of the foregoing reasons, it is submitted that it was error for the trial judge to fail to guide the jury by precaution as requested by petitioner. As the above discussion also indicates, the error was harmful and prejudicial. Petitioner was not accorded the fair and impartial trial to which he was entitled. Without the testimony of the paid professional informers, the case could not even have gone to the jury. Had the warning and caution being given to the jury, with the impressiveness which accompanies a court's instruction, the result might have been quite different. At least this Court cannot speculate upon the question and resolve it against petitioner. The charge of the trial court fell far short of the requirements of the situation. It amounted to nothing more than the general admonition, which it is proper for the court to give in all cases. There is "grave doubt" here whether the failure to give the instruction did not substantially "influence" the result. The conviction should not stand. *Kotteakos v. United States*, 328 U. S. 750, 764-5.

Conclusion.

For all reasons herein given, the judgment of conviction should be reversed.

Respectfully submitted,

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APPENDIX I.

Comparison of Matusow Testimony at the Trial of Jencks and in His Recantation Thereof.

Trial Testimony

"Q. Did you have any conversations there on that occasion with Clinton Jencks, the defendant in this case, concerning the Communist Party or its activities?

"A. I did." [R. 243-244.]

Motion for New Trial Testimony

"Q. I will ask you if that was a true and correct answer?

"A. It was not.

"Q. I will ask you if the following questions and——

"THE COURT: You mean, then, it is false?

"THE WITNESS: Yes, your Honor.

"THE COURT: Let us just say it is true or false. Let us get down to the right point. He says that answer was false.

"MR. HARRIS: I don't want to interrupt. It wasn't quite clear to me, did Mr. Matusow indicate he had no conversation whatever?

"THE COURT: He said that was false, that is the way the Court understood it.

"Q. Now, will you state in what way that answer was false?

"A. The answer was to a question of whether I had

Trial Testimony

Motion for New Trial Testimony

discussions with Mr. Jencks about the Communist Party or its activities, and I had no such discussions with Mr. Jencks.

"Q. And in that respect the answer was false?

"A. Yes, sir." [H. 28-29.]

A. THE CONVERSATION WITH JENCKS AND MARCUS.

"Q. Do you know about when the first conversation occurred?

"A. Yes.

"Q. When was it?

"A. Shortly after I arrived.

"Q. Well, about what day in July, if you know, was it; what is the most accurate day in July that you went there?

"A. Well, it was in the latter part of July, between the 15th and 20th, to the best of my recollection.

"Q. Of 1950?

"A. That is correct." [R. 244.]

"Q. Will you explain in what degree it was true and in what degree it was false?

"A. The degree of truth was that I had conversations with Clinton Jencks and on or about those days I testified to, but it is false where I said that the discussion or conversations dealt with the Communist Party or its activities." [H. 30.]

"Q. Was anyone else present at this first conversation you have in mind that

"Q. Was that true or false?

"A. False.

Trial Testimony

you had with Jencks concerning Communist Party activities?

"A. Yes.

"Q. Who?

"A. Mr. Abraham Matcus.

"Q. I believe you have testified him as a Communist Party member, did you not?

"A. That is correct." [R. 244.]

"Q. From that conversation with Mr. Jencks or otherwise—I will withdraw that question. Please give us, the best you can, what was said by you, Mr. Marcus, or Mr. Jencks in this first conversation, and giving the setup for it, what you were doing, and so forth?

"A. I was unloading some cartons of Communist books from my truck, the truck which I travelled to the ranch in. Mr. Jencks and Mr. Marcus were helping me get the books out. Mr. Marcus said that he had written a book called 'Elements of Radio' which was used as a text book in the north city school systems, and I said that I had a copy of this book, be-

Motion for New Trial Testimony

"Q. In what respect is it false?

"A. I never knew Mr. Marcus to be a member of the Communist Party." [H. 31.]

"Q. I will ask you if that was a truthful answer?

"A. In part.

"Q. Will you tell us what parts are truthful and what parts were false?

"A. The fact that Mr. Marcus was there and he told me that he had written a book called 'Elements of Radio,' which was a book on physics and dealt with radio, to my recollection it was the only part of that which is true in relation to the conversation. There was no conversation about the Communist Party or Communist Party membership; and I did not have, as I stated, a Communist library; and when I said in that testimony that this book 'Ele-

Trial Testimony

ing one of the few non-Communist books I had in my library, to be sure; I started to unpack the cartons, a few of them, to try and find this book. While I was unpacking the cartons we started to discuss the Communist Party. I said that I had left New York permanently and was thinking of either living in New Mexico or California: that I was going to transfer my Communist Party membership to either New Mexico or California. When I said that Mr. Jencks said, 'It is a good idea, we can use more active Communists out here.' " [R. 244-245.]

Motion for New Trial Testimony

ments of Radio' was one of the few non-Communist books I had, that was completely false. The overwhelming majority of my books were not of a political nature but dealt with poetry, theatre, art, literature, et cetera.

"Q. What about the portion of that conversation you testified to relating to changing your Communist membership to New Mexico or California. Was that true or false?

"A. That was false. And, as I said, there was no discussion about Communist Party membership or Communist Party activities." [H. 31-32.]

B. THE CONVERSATION ABOUT "DO DAY."

"Q. Do you recall having another conversation with him along about that time or soon thereafter?

"A. I do.

"Q. About what was the date of this second conversation that you recall, if you know, approximately?

"A. Well, there were many conversations.

"Q. I mean, concerning

"Q. Were those answers true or false, and in what respect?

"A. They were true only in the respect to the fact that during that period of time I did see Clinton Jencks and talked to him but whether it was the second conversation with Clinton Jencks, I am quite sure that it was not the second conversation be-

Trial Testimony

the Communist Party activities?

"A. That took place, I believe the last Sunday in July or the first Sunday in August, 1950." [R. 245.]

"Q. And the second conversation about Communism with Mr. Jencks occurred, I believe you say, about the first Sunday in August?

"A. It was the first Sunday in August or the last Sunday in July.

"Q. Of 1950?

"A. That is correct." [R. 245.]

"Q. What, if anything —As best you can recall, relate the conversation with Mr. Jencks, what you said and he said, or anyone else who was present in the conversation?

Motion for New Trial Testimony

cause I saw him on many days and had many non-political discussions with him.

"Q. Did you ever hold any discussions with Mr. Jencks regarding Communist Party activities?

"A. No, sir." [H. 33.]

"Q. And will you tell us whether that was true or false?

"A. Partially true, partially false.

"Q. Will you tell us in what respects it was true and in what respects it was false?

"A. When I stated that I had discussions with Clinton Jencks about the Communist Party and its activities, that was false, and there again I believe it was not a second talk I had with him. I saw him on that day. But other than that it is true I was at the ranch at that time." [H. 34.]

Trial Testimony

"A. I told Mr. Jencks that I had just spoken to Mr. Joseph DeSanti, and had previously spoken to Mr. Craig Vincent about trying to expedite the transfer of my Communist Party membership from New York City to the State of New Mexico and he said it was a good idea, 'we can use you out here, we need more active Party members.'" [Partial answer, R. 245.]

"[A.] He then told me he was preparing a lecture which he was going to deliver at the ranch in regard to the Communist-sponsored Stockholm Peace Appeal and asked me what I and other Communists had been doing in New York in relation to the Communist-sponsored Stockholm Peace Appeal." [Partial answer, R. 245.]

Motion for New Trial Testimony

"A. That part is false." [H. 37.]

"A. Partially true, partially false.

"Q. In what respects is it false?

"A. The fact of the term 'Communist-sponsored Stockholm Peace Appeal.' The use of the term 'Communist' was my own doing in this court in an attempt to influence the jury and the court.

"MR. HARRIS: Now, your Honor, I don't think we are concerned with Mr. Matusow's opinions.

"THE COURT: Yes, that is right. Objection sustained.

MR. HARRIS: May we have it stricken, please?

Trial Testimony

"[A.] I told him we had been pretty active, getting signatures on petitions for this Stockholm Peace Appeal, that we had held street meetings and canvassed neighborhoods to get signa-

Motion for New Trial Testimony

"THE COURT: Yes, that part will be stricken from the record.

"Q. Now, as I understand your answer, the only portion of that which I read that was false was the reference to 'Communist-sponsored'?

"A. No. More than that. Mr. Jencks didn't ask me about what were Communists in the East doing about fighting for peace. He didn't refer to the Communist Party at all, as I recall. He didn't in his lecture deal exclusively with the Stockholm Peace Appeal.

"Q. We hadn't gotten to the lecture yet on this question.

"A. Well, in the discussion, there was a discussion in the lecture and that part was true but it had nothing to do with Communist Party activities." [H. 37-38.]

"A. If the 'we' I am referring to in my answer refers to Communists doing that then it is false. I believe I did tell Mr. Jencks that I with a group of other young people belonging to other or-

Trial Testimony

tures on petitions to raise funds. That one group of us had gone up to the Polo Grounds just before a Giant-Dodger double-header and painted sidewalks and walls, with slogans put up by the Stockholm Peace Appeal." [Partial answer, R. 245-246.]

"[A.] I told him about a 'do-day,' which we called ". That was a day when I told him we had no meetings. We just put into action everything we had discussed the preceding week. No discussion, no meeting, but our Communist Party club just went out and did it." [Partial answer, R. 246.]

"[A.] He said it was a very good idea. He would like to mention the 'do-day' in his lecture and bring that idea back to some of his fellow Party members in Silver City. I then asked him what

Motion for New Trial Testimony

ganizations, not the Communist Party, did circulate petitions of the Stockholm Peace Appeal, and had planned to paint slogans on the sidewalks near the Polo Grounds, but at no time did I refer to the Communist Party activities." [H. 38.]

"A. Partially true and partially false. The part referring to the Communist Party do-day was false. From my recollection of the discussion with Mr. Jencks I was referring to a do-day that I as a member of the American Newspaper Guild, CIO, had initiated with a group of rank and file newspapermen. I mean, in the Union Local 3.

"Q. Was there any reference to a Communist Party Club in that conversation?

"A. No, sir." [H. 39.]

"A. Partially true and partially false. Mr. Jencks did like the idea of a do-day and thought it would be a good idea for his own union activities in the Mine, Mill & Smelter Workers Union.

Trial Testimony

he and other Communists in New Mexico were doing in relation to the Stockholm Peace Appeal and the fight to put an end to the Korean War." [Partial answer, R. 246.]

"[A.] He pointed to a lapel pin which he was wearing, told me he had gotten that lapel pin when he was in Mexico visiting some Mexican Communist union organizers with the Mexican min-

Motion for New Trial Testimony

At no time did he say he wanted to use that in relation to the Communist Party activities. That would be false, when I referred to the Communist Party, and I didn't ask Mr. Jencks what he and other Communists were doing as the answers indicate that I did. I might have asked him what he was doing about——

"MR. HARRIS: Now, your Honor, I don't think the last part of that is responsive.

"THE COURT: No. We will confine it to the particular respect in which it is true or false.

"MR. BIGBEE: All right.

"Q. In other words, there was no reference to Communists or Communist activities in that entire conversation?

"A. That is right, sir." [H. 40.]

"A. Partially true. He did have a lapel pin of the Mexican Miners Union and said he had gotten it from members of the Mexican Miners Union. He didn't say that he had gotten it from

Trial Testimony

ers union.". [Partial answer, R. 246.]

"[A.] I don't remember the exact name of the union but it was something like 'Mexican Miners Union,' and said that some of the Mexican Communist organizers down there had been up in Silver City and visited with him, and that they were trying to see that their contracts, both in Mexico and the United States, ran out at the same time so that they would be able to end all mining and smelting, and so forth, in basic metal production in an attempt to cut off production or slow it down for the Korean War effort, which he termed as an unjust and imperialistic war." [Partial answer, R. 246.]

"[A.] And that, to the best of my recollection, is the second major conversation about Communism." [Partial answer, R. 246.]

Motion for New Trial Testimony

Communists or Communist organizers in Mexico." [H. 41.]

"A. Partially true, partially false. The reference to members of the Mexican Miners Union visiting him and discussing plans to cut off copper production was entirely false. The part that was true, I think Mr. Jencks did refer to and felt that the Korean War was an unjust war at that time.

"Q. But so far as you recall, that is the only thing in your answer that is true, the last portion?

"A. That is right, sir." [H. 41.]

"A. The whole answer was false, except the fact that I believe Mr. Jencks, my recollection is that Mr. Jencks did refer to the Korean War as an unjust war, but he didn't use the term 'imperialist' or 'unjust' that I recall." [H. 42.]

"A. That answer was false.

"Q. Why is that answer false?

"A. I did not have dis-

Trial Testimony

Motion for New Trial Testimony

cussions about Communism with Mr. Jencks." [H. 42.]

C. JENCKS' LECTURE AT THE RANCH.

"Q. As best you can recall, state what Clinton Jencks said concerning the matters you have just discussed and concerning Communism in any way?

"A. At this lecture, which I attended, Mr. Jencks spoke about the role of the trade unions in the drive for peace and for the Communist-sponsored Stockholm Peace Appeal." [Partial answer, R. 247.]

"[A.] He spoke in favor of the Soviet Union's plan for atomic and other disarmament and putting an end to the Korean War, being that the United States was the aggressor nation, we had no business being in Korea; and . . ." [Partial answer, R. 247.]

"A. He didn't refer to the Stockholm Peace Appeal as Communist-sponsored. I believe he did say that it was true when he referred to the trade unions as a fight for peace." [H. 44.]

"A. I have no recollection or had none when I testified of his mentioning the atomic disarmament plan of the Soviet Union. I believe he did say he was in favor of putting an end to the Korean War and I don't recall having heard him say the United States was the aggressor, but that was all I did recall at the time I testified to it.

"Q. You had no recollection of him making those statements at the time you previously testified?

Trial Testimony

"[A.] And during the lecture he referred to this 'do-day,' a day of no meetings but just action." [Partial answer, R. 247.]

"Q. Where at the San Cristobal valley ranch was it held?

"A. In the library at the ranch." [R. 247.]

"Q. What is the nature—do you know what the nature of the books in that library are, or what the nature was?

"A. At the time, yes." [R. 247.]

"Q. What nature books did you see there?

"A. Many books published by the Communist Party, International Publishers, New Century Publishers. There were magazines, 'Political Affairs,' which is officially the Communist Party theoretical magazine. Copies of the 'Daily Peoples World,' the West Coast Communist newspaper. And certain other

Motion for New Trial Testimony

"A. No recollection, no, sir." [H. 44.]

"A. He did jokingly refer to do-day in relation to my discussion with him." [H. 44.]

"Q. Was that true or false?

"A. It was true." [H. 45.]

"Q. * * * Was that testimony true or false?

"A. I gave that testimony, and I was familiar with the library. Yes, it was true." [H. 45.]

"Q. Was that testimony true or false?

"A. Partially true.

"Q. Will you tell us in what respect it was true and in what respect it was false?

"A. In respect that those books did exist in that library but I did not mention to the Court and give a complete description of that library, that the overwhelming majority of the books were of a fictional nature, and I

Trial Testimony

books not pertaining to Communism. I think they had an encyclopedia, some kind of fiction, mystery stories, and so on." [R. 247.]

"Q. Did Mr. Jencks make any comment about the books in the library that you recall?

* * *

"A. He did." [R. 249.]

"Q. Approximately what did he say about that?

"A. He asked the people present to read the 'Daily People's World,' the Communist Party newspaper on the West Coast; and I forget the names of the pamphlets but there were a few pamphlets that were published by New Century Publishers, the Communist Press, in relation to the Stockholm Peace Appeal and the drive for peace, as he called it." [R. 249-250.]

Motion for New Trial Testimony

just brushed that over lightly and said there was an encyclopedia and some westerns when that wasn't so. There were many books, an overwhelming majority of the books were of a standard nature." [H. 46.]

"A. That answer is false to my recollection, at the time.

"Q. Both then and now?

"A. I had no recollection then nor do I now of Mr. Jencks referring to any books that were of a standard nature." [H. 46.]

"Q. Was it true or false?

"A. It was false" [H. 47.]

D. THE CONVERSATION ABOUT A.N.M.A.

Trial Testimony

"Q. Did you have any other discussions concerning the Communist Party or any of its affiliates or activities after this lecture?

"A. I did." [R. 251.]

"Q. About when was this next conversation in that regard?

"A. It was about the time of the lecture." [R. 251.]

"Q. If you can, state what you said and Mr. Jencks or anyone else present at the conversation said?

"A. I told Mr. Jencks that I had joined the Taos, New Mexico, chapter of Anma, that I was working there until my Communist Party membership was transferred from New York to New Mexico." [Partial answer, R. 251.]

Motion for New Trial Testimony

"A. The answer was false." [H. 47.]

"A. You refer to the question about the discussion of the Communist Party or its activities?

"Q. Yes?

"A. That answer was false." [H. 47.]

"Q. Was it true or false?

"A. Partially false. I never told Mr. Jencks that I expected Communist Party transfer. In fact, I don't recall telling Mr. Jencks I joined the Taos Chapter of ANMA, but I had no recollection of telling him that when I testified nor do I now, though I could have told him that I joined ANMA, but I doubt it.

"Q. Did you have any conversation at that time or any other time with Mr. Jencks concerning the Communist Party or its activities?

"A. No, sir." [H. 48.]

Trial Testimony

"[A.] Mr. Jencks told me that this was proper Communist Party concentration work, that he was active in Anma in the Silver City area, and stated that Anma was a key organization as far as Communist activities were concerned in the state of New Mexico, that the Communist Party in the state controlled Anma and used it as a political sounding board, a propaganda sounding board in the state, and that Anma helped in cementing fraternal and working relationships with the Communist Party and the Mexican Miners Union in Mexico." [Partial answer, R. 251.]

Motion for New Trial Testimony

"Q. Was it true or false?

"A. It was false in every respect except that at sometime, not specifically that conversation, Mr. Jencks might have told me that he was active in ANMA and that there was an ANMA chapter or branch connected with his local of the union, but at no time did we discuss ANMA in relation to the Communist Party.

"Q. Do you now or did you at the time of giving the testimony have any specific recollection of any conversations with Mr. Jencks concerning any phase of ANMA?

"A. At the time I testtified and I do now recall Mr. Jencks in conversation sometime told me that he had been a member or there were members of ANMA in his union, but he never said that ANMA was a Communist front or a Communist-controlled organization." [H. 48-49.]

APPENDIX II.

Summary of Evidence Adduced at Hearing on Motion for New Trial, Arranged in Chronological Order.

1. February 7, 1952—Matusow testified before House Un-American Activities Committee concerning Jencks. (Hearings, Committee on Un-American Activities, House of Representatives, 82nd Cong., 2nd Sess.)

2. October 8, 1952—Matusow testified before McCarran Subcommittee of Senate Committee on the Judiciary. [H. 70; Hearings, Subcommittee to investigate the administration of Internal Security Act and other internal security laws, Committee on the Judiciary, U. S. Senate, 82nd Cong., 2nd Sess., pp. 153, 154, 175.]

3. October 8, 1952—Meeting of Mine-Mill representatives at Hotel Newhouse in Salt Lake City. On the day that Matusow testified at the McCarran hearing the Mine-Mill representatives gathered in the mezzanine of the Hotel Newhouse where their headquarters were. The witness Henderson heard Jencks talk to one Dolan. Dolan complained that Jencks had spoken to Matusow at all at the ranch in New Mexico. Jencks replied that he had to tell the man something, that he was a greenhorn out here in the West, and that Jencks more or less thought he was having a little fun by telling him some stories. [H. 540.] Dolan replied that this was foolish. [H. 541.] On cross-examination the witness Henderson testified in part as follows:

> "Q. But actually as far as you could ascertain what happened was this greenhorn came out here to New Mexico and got hurrahed and took it seriously and made a lot to do out of nothing, isn't that right? A. Yes, that is more or less right." [H. 542.]

The witness Weinert also testified to this conversation saying that Dolan asked Jencks what the idea was talking to "that phoney stoolpigeon Matusow" and Jencks replied that he had been with him at the San Cristobal Ranch, that Matusow had asked him about the strike, and Jencks "just handed him a line." [H. 534.] The witness thought that they were talking about the 1951 strike. [H. 537, 538.] The alleged conversation between Matusow and Jencks took place, of course, in 1950.

4. October 8, 1952—At the proceedings referred to in Item 2 above, Jencks was asked to deny Matusow's testimony and he claimed the privilege against self-incrimination. [H. 141-146.]

5. December, 1952—Matusow escorted one Arvella Bentley out of the country so as to place her beyond the reach of the subpoena of a Senate Committee investigating the financial transactions of Senator McCarthy. The trip was taken to cover up the transactions involving Senator McCarthy and it succeeded. Matusow later married Mrs. Bentley. [H. 197-200.]

6. January, 1953—Matusow sold to the newspaper columnist, Drew Pearson, the "story" of the trip, together with personal notes in his wife's handwriting and other corroborative materials pertaining to her. He did this without her knowledge [H. 200-201], and received $250 for it. [H. 197.]

7. April 20, 1953—Matusow testified before the grand jury in El Paso that returned the indictment against Jencks. [H. 68, 602; G-26 at H. 617-627.] He recanted it in detail at the hearing below. [H. 649-671.]

8. August 23 or 24, 1953—Matusow wrote his letter to Senator McCarthy, G-1 [H. 57-61.] Matusow claims

this letter indicates that he gave false testimony. [H. 61-65.]

9. August 27, 1953—Matusow spoke to an FBI agent at Santa Fe, New Mexico. According to Matusow he told the agent that he did not want to testify in the Jencks trial, that "I didn't feel my testimony was honest . . . I didn't want ever to testify and especially in the Jencks trial that was coming up." Matusow said that he dictated his statement to the agent and read over the agent's notes after they were written down. [H. 67-69.]

The agent's version of the incident is that Matusow asked to be spared the necessity of testfying at the Jencks trial because the resulting publicity would interfere with his disturbed marital relations with Arvella Bentley. The agent said that Matusow had made no reference to his not being honest in his testimony. [H. 754.]

The defense asked that the court direct the production of the FBI memorandum recording the conference between Matusow and the FBI agent. [H. 107, 147.] It was denied for the reason that "I take it that is part of the private files of the FBI." [H. 107.] The government had made no such assertion.

10. September 28, 1953—Matusow gave an affidavit to the New York Times retracting his testimony given at the McCarran Subcommittee (see Item 2 above) to the effect that there were some 120 Communist Party members among the employees of the New York Times. In the affidavit he admits that his McCarran testimony was "hearsay" and conjecture and surmise. [See G-4, paras. 6 through 12, H. 170-171.] At the hearing below Matusow admitted that many of the statements in the affidavit to the New York Times were untrue. [H. 173.]

11. Early October, 1953—Conversation with Elmer Davis. [H. 640.] Matusow told Davis that he had "wrongly accused people, both in speeches and under oath." [H. 643.]

12. Fall of 1953—Began work on book called "Blacklisting Was My Business." [H. 201.] This was a working title. [H. 201.] The outline of the book is marked G-6 [H. 213 ff.] and the sample chapter on McCarthyism is marked G-7. [H. 219 ff.] The outline was used by Matusow in writing the book which was published as "False Witness." [H. 208.] There is nothing in the outline about Jencks because at the time it was prepared the Jencks trial had not been held and Matusow felt that he would not be called as a witness because of his conversation with the FBI agent in Santa Fe. [H. 253.] The outline contained no material on Mine-Mill because at the time he prepared the outline Matusow was not sure in his decision to clear himself. [H. 254.]

Matusow went to a number of other publishers with his outline and draft chapter. [H. 244-251.]

The material under heading 8 in the outline, "Dude Ranch for Communists," does appear at various parts of the final book, "False Witness." [H. 234-248.]

13. December 4, 1953—Matusow testified before the Texas Industrial Commission. [H. 579; G-24 at H. 583-602.] He appeared there voluntarily. [H. 572.]

14. Jaunary 15, 1954—Matusow testified at Jencks trial in the United States District Court for the Western District of Texas, El Paso Division.

15. April 27, 1954—Matusow held his first conversation with Bishop Oxnam at the Waldorf-Astoria Hotel in New York. [H. 189, 278.] Matusow apologized to the

Bishop for having attacked him in a speech given by Matusow at Libertyville, Kentucky. [H. 278-280.]

Matusow substantially accepts in this hearing the version of this conversation given by Bishop Oxnam before the Subversive Activities Control Board October 18, 1954. [H. 628 ff.] So far as pertinent here, this version is that at the first meeting Matusow stated to Bishop Oxnam that he had lied again and again in statements made to committees and in reports he had made. Matusow said that he believed it his duty to go to each one about whom he had borne false testimony and ask for forgiveness. [H. 629.] Matusow also told the Bishop that he was writing a book called "Blacklisting Was My Business." [H. 629.] Bishop Oxnam stated his willingness to meet with Matusow again. [H. 630-631.]

16. May 29, 1954—Matusow held conversation with Messrs. Russell Brown and Robert Norvell, law associates of former Attorney General Howard McGrath. He told them that he had given false testimony in the past and the conversation was substantially the same as that with Bishop Oxnam on May 31 (see Item 17 below). [H. 638.]

17. May 31, 1954—Matusow's second conversation with Bishop Oxnam. [H. 631.] Here again Matusow now accepts substantially the version of this conversation given by Bishop Oxnam before the Subversive Activities Control Board. [H. 631-636.] So far as here pertinent, it is that Matusow stated to the Bishop that he had "borne false testimony" in his statements before different committees. [H. 632.] Matusow told the Bishop that he was writing a book on the world of McCarthy called "Blacklisting Was My Business" and he wanted an advance of $1,500 so that he could complete

the work on the book. The Bishop's understanding of the conversation is that Matusow wanted the Bishop to put up the $1,500. Matusow says that the Bishop got the wrong impression, that Matusow wanted the Bishop to help him locate a publisher from whom Matusow could get the advance. [H. 633.] In the second conversation Matusow borrowed $5 from Oxnam. [H. 281.] Matusow had with him at the second conversation copies of his outline and sample chapter of "Blacklisting Was My Business." [G-6 and G-7; H. 210, 192.]

18. "Before June, 1954"—Matusow's conversation with Mr. Fink of Department of Justice. [H. 260.] Fink asked Matusow to testify in a proceeding of the Subversive Activities Control Board against one Howard Selson. Matusow refused to testify. He did not tell Fink that he had lied in Jencks' or any other testimony. [H. 254-257.]

19. "Late May, 1954"—Matusow's conversation with Mr. Irons of the Department of Justice. [H. 264.] Matusow told Irons that his past testimony had been based upon his instability and he would prefer not to testify further. [H. 264.] Matusow however left the question of his further testifying up to the Department of Justice. [H. 264.] He did not tell Irons that he had lied before.

In connection with Matusow's reference to instability, it is highly significant that the Department of Justice knew as early as January, 1952, that Mr. Matusow had been diagnosed as having a "psychoneurosis of a mild but acute form." This diagnosis was first given to the United States Attorney in New York City in January, 1952. It was brought to the attention of Mr. Tompkins, Assistant Attorney General in charge of the Internal Security Division, on February 23, 1955. Mr.

Matusow's psychoneurosis was not called to the attention of the court at the trial of Jencks nor at the hearing on the motion although it is plain that the government was fully aware of these facts long before either of those proceedings. There are administrative proceedings in which the testimony of Matusow is being disregarded because of the revelations concerning his testimony and condition. (Hearings, Subcommittee of the committee on Appropriations, House of Representatives, 84th Cong., 1st Sess., pp. 293, 307; Subversive Activities Control Board, Report, *Herbert Brownell, Jr., as Attorney General of the United States v. Labor Youth League,* Docket No. 102-53, decided February 15, 1955, pp. 4 and 5. This material was not made part of the record in the trial court because the defendant did not know of it until after the hearing closed and the government did not choose to call it to the attention of the court.)

20. June, 1954—Matusow left New York and went to Dallas, Texas. His purpose was to get away from all of his past associates and to think out what he should do with reference to his past testimony. [H. 418.]

21. July 12, 1954—Matusow testified before the House Committee on Un-American Activities. This testimony was marked G-5 for identification. [H. 178.] Apparently Matusow was called before the committee in connection with Bishop Oxnam's public speeches in order that the committee could ascertain whether Matusow had lied at any time in testifying before it. In the course of that testimony Matusow made the following statements (Hearing, Committee on Un-American Activities, House of Representatives, 83rd Cong., 2nd Sess., July 12, 1954):

—After reviewing all of the occasions on which he had testified, including his testimony before the

grand jury and in the trial of the Jencks case, Matusow said, "Sir, I do not believe I told any untruth at any time under oath." [H. 183.]

—It is "correct" that he is "reaffirming the testimony that you gave this Committee when you appeared before it on February 6 and 7, 1952." [H. 185.]

—". . . and I did not say and I do not say now that I ever lied under oath. If I had lied under oath, I have no qualms about saying so." [H. 188.]

—After being confronted with a newspaper report of Bishop Oxnam's speech in which Oxnam attributed to Matusow the remark that Matusow wished to undo "all the lies I have told about many people," Matusow was asked whether the Bishop was correctly reported by the newspapers. Matusow's reply is, "If he was correctly reported by the newspapers, the Bishop is a dishonest man." [H. 188.]

Matusow testified at the hearing below that he would not have told the Un-American Activities Committee about Jencks or other false testimony because he did not trust Chairman Velde or the "Senator McCarthy crowd." [H. 426.]

22. September 13, 1954—Messrs. Witt and McTernan, counsel of record for Jencks, conferred in New York concerning a draft motion for new trial in the Jencks case based upon the Oxnam-Brown material (see Items 15, 16 and 17 above) and agreed to try to find a publisher to assist Matusow in writing his projected book. [H. 798.]

23. September 21, 1954—Mr. Witt reports to officers' meeting of Mine-Mill, at Butte, Montana, concerning Matusow's admissions of false testimony. Witt was directed

to continue his investigation and he was authorized to spend up to $1,000 in connection therewith. [H. 775-778, 443-445.]

24. "The first part of October," 1954—Beginning of relationship between Mr. Witt and the publishing firm of Cameron & Kahn. Witt met with Albert Kahn to discuss the project of publishing a book wri en by Matusow. This had already been discussed in part between Kahn and Jencks. Kahn told Witt that his publishing firm was in financial difficulties and would be unable to engage in the project without some money by way of an advance on an order of the book when published. Witt agreed to purchase on behalf of Mine-Mill $1,000 worth of books. These would be paper-bound books selling at 50 cents a copy so that the union purchased 2,000 such books. Witt advanced Kahn $250 before Kahn made his contract with Matusow. Thereafter Witt made payments to Kahn in October of $450, in November of $220, in December of $580, making a total of $1,250. [H. 774, 779, 780, 802.] Witt insisted with Kahn that Matusow not know about any financial arrangements made with Kahn on behalf of Mine-Mill. [H. 782.] Matusow testified that he first learned of the Mine-Mill advances to Cameron & Kahn on February 3 to 5, 1955 [H. 671], about two weeks after he had executed his recanting affidavit on January 20.

25. September or October, 1954—Matusow told an elder of the Mormon Church in Dallas that he had given false testimony. [H. 347, 357.] He claims his religious privilege against disclosing any conversation with representatives of the church on this subject. [H. 357-360.]

In this connection, while testifying in support of a motion for new trial based upon recantation of his testi-

mony in *United States v. Flynn* (130 Fed. Supp. 412), Matusow also claimed his privilege. He was there asked to write down the name of the religious adviser and seal the paper in an envelope pending ruling by the court on his claim. The claim of privilege was later rejected and the envelope opened. Matusow had written on the paper, "The Church of Jesus Christ Latter Day Saints in Dallas, Texas. I talked to a few leaders of the Dallas Stake." He did not enter the name of anyone on the piece of paper. [H. 362-374.]

26. October 1, 1954—Matusow became a convert to the Church of Jesus Christ of the Latter Day Saints. [H. 680.]

27. October, 1954—Matusow wrote the Attorney General denouncing the conviction of Corporal Batchelor and advising the Attorney General that he would not testify for the government any more. [H. 258, 266.]

28. October, 1954—Matusow received a message by telephone from his parents in New York that Mr. Cameron of the firm of Cameron & Kahn was trying to reach Matusow. This occurred before Matusow left Dallas on his hitch-hiking and bicycle trip. [H. 297-299.] Matusow tried unsuccessfully to reach Cameron before leaving Dallas. [H. 300.]

29. "Late October," 1954—Matusow left Dallas to go to Salt Lake City, planning to engage in uranium prospecting in Utah. [H. 283, 284, 302.] At that time his mind was made up to tell the truth but he had not told anyone. [H. 284.] He left Dallas on foot with a knapsack on his back. [H. 285.] He hiked and hitch-hiked and later bought a secondhand bicycle in some small town, paying for it from funds in his pocket. [H. 287.] At various places he earned a meal or a little money washing

dishes or picking cotton or harvesting maize. [H. 291, 294, 317.] He estimates the amount of money in his pockets at one time as between $70 and $100 and later as between $40 and $60. [H. 300.] He cannot recall whether he took the manuscript of "Blacklisting Is My Business" with him when he left Dallas. [H. 301.]

30. October or November, 1954—Incident at Amarillo, Texas. While on the trip from Dallas Matusow stopped at Amarillo. There he was accosted by a policeman who frisked him and demanded identification. Fearing that he was on the verge of arrest he told the officer some falsehoods. As he recalls it he told the policeman that he was a former undercover operator for the FBI. He does not recall that he told the policeman that at that time he was an agent for the FBI. [H. 310-314.]

31. October 21, 1954—Matusow arrived in Taos, New Mexico, en route from Dallas, Texas. [H. 319.]

32. October 22, 1954—Matusow reached Kahn of Cameron & Kahn by telephone from Taos. [H. 321, 324, 325.] Kahn told Matusow that he was interested in seeing Matusow's manuscript. Matusow said he was on his way to Salt Lake City and Kahn offered to meet him there. Matusow said that his manuscript was in New York and Kahn asked Matusow to come to New York. Matusow replied that he would if Kahn were seriously interested in publishing the book. Matusow finally agreed to go to New York from Taos if Kahn would send him a round-trip ticket. [H. 326.]

33. October 22, 1954—Matusow traded his bicycle for hotel accommodations. Matusow made this trade after the telephone call with Kahn. He wanted to get rid of the bicycle because he knew he was going to New York. [H. 321, 322.]

The owner of the hotel testified that Matusow said on the night of his arrival (and before the call to Kahn) that he might have to trade his bicycle for a room. The trade was made the next day and the owner agreed to take the bicycle for 4 or 5 days' rent, having settled on the value of the bicycle at $15. Matusow left before he had used up the full amount of his trade. [H. 706-709.] The owner thought that $15 was the fair value of the bicycle. [H. 710.] Making trades of this kind is not unusual for this hotel. [H. 723.]

34. October 22, 1954—Matusow borrowed $10 from Doughbelly Price. [H. 322.] Matusow thinks he negotiated this loan after he had the telephone conversation with Kahn. [H. 327.] The loan was made by check and Matusow cashed it at El Patio Restaurant in Taos. [H. 327, G-25 at H. 610.]

35. October 22, 1954—Matusow held conversation with one Golden in Taos. This conversation occurred on the Friday after Matusow arrived. [H. 332.] The conversation dealt with the Oxnam testimony, and in the course of it Matusow said, "I never lied under oath." [H. 613.]

36. October 22, or 23, 1954—Matusow had conversation with two Mormon missionaries in Taos. [H. 611.] According to one of these missionaries, Matusow accosted them in Taos near the post office telling them that he had recently been converted as a member of their church and had made a trip from Dallas by bicycle. [H. 760.] The witness continued,

> "I guess he mentioned the fact that he had been working against the Communist Party that was in a dude ranch near that area. . . He tried to establish his identity by asking if we had read a

book that he had written, if I recall right, and either that or it was he referred to a book he was going to write about the Party, or about the experiences that he had with the Party at the dude ranch." [H. 760-761.]

37. Matusow's contacts with Riley Taintor in Taos. Taintor saw Matusow on the first full day that Matusow was in Taos. He also saw him the next day. On these occasions Matusow said that he was "broke" and either Taintor or Doughbelly Price paid for such things as coffee or lunch when they were together. Taintor was present when Matusow asked Price for a loan and he saw Price give Matusow a check. [H. 730-733.] The last time Taintor saw Matusow the latter was excited saying that he was going to New York and was getting an advance and a plane ticket from his publisher. [H. 734.] This conversation occurred on the same day that Matusow left Taos by bus. [H. 735.] Matusow took Taintor to dinner that time and was very happy over the fact that his deal for publishing his book had gone through. Matusow exhibited a large roll of bills saying that he had gotten an advance of $1,000. [H. 737.] Taintor describes the roll of bills as "very large," saying that he could see "at least two ten's, maybe a twenty, maybe two twenty's." [H. 737.] Matusow admitted that he saw quite a bit of Riley Taintor on the Saturday that he was in Taos (October 23) and he said that he could have been at the bus station with him that day. [H. 334.] Matusow denied Taintor's testimony dealing with the advance from the publisher and the roll of bills. [H. 345.] Matusow testified that he received no money in Taos from Cameron & Kahn or from Mine-Mill. [H. 342.]

38. October 23, 1954—Matusow left Taos for New York. He traveled from Taos to Albuquerque by bus.

on the evening of October 23. [H. 344.] He arrived in Albuquerque sometime after 8 o'clock, perhaps closer to 10 or 11 o'clock. [H. 375.] He traveled from Albuquerque to New York by TWA, his flight leaving sometime after midnight and in the early morning hours of October 24, 1954. [H. 375.] In Albuquerque Matusow picked up his plane ticket as a result of a purchase order sent by Kahn in New York. [H. 330.]

39. October 23, 1954—Matusow conversation with Atchison at TWA ticket counter in Albuquerque. Atchison and Matusow talked about Matusow's trip from Dallas to Taos. [H. 546.] Matusow told him that he was a free-lance writer and was gathering material for a book. In response to Atchison's question why Matusow was discontinuing his trip Matusow replied that he was wanted back in New York to write a book. Atchison asked whether he was going to write the book about his experiences on the trip and Matusow answered, "No, they are not interested in the truth but as long as they will pay money for it I will write anything." [H. 546-547.] Atchison understood Matusow's remark to mean that "whoever he was going to write a book for didn't want to buy his book on his experiences walking across the country." [H. 553.] Matusow denied making the quoted statement to Atchison. [H. 378, 671.]

40. October 25, 1954—Matusow held his first meeting with Cameron and Kahn at the Hotel Delmonico in New York City. [H. 233.] He discussed with them the writing and publishing of the book which he had partially written under the title, "Blacklisting Was My Business." Matusow brought to this conference the material which he had already prepared for this book, namely, the outline G-6, the sample chapter G-7, together with ap-

proximately 100 pages of draft. [H. 234, 378.] There was no mention of Jencks in the material that he brought to this meeting with him. [H. 253.]

Cameron & Kahn did not tell Matusow that they had been in touch with Witt about this project, and they did not tell him that Mine-Mill had authorized the expenditure of $1,000 to assist in the writing of the book. [H. 379.] Matusow at that time knew of no arrangement between Cameron & Kahn and Mine-Mill to purchase his book when it should be written. [H. 379.] At that time Matusow had "some inkling" that he would write "some affidavits." [H. 379.] The arrangements that Matusow asked for were an advance of $1,500 to cover the following: $50 a week for a period of about 4 months, $250 in cash, the plane fare from Albuquerque to New York, and such secretarial help as Matusow should need. [H. 379-380.] Matusow in turn was to deliver 5500 words per week beginning on November 1, 1954, and to have a completed manuscript by February 1, 1955. [H. 402.] Cameron & Kahn suggested that he needed more time, perhaps until June or July, but Matusow insisted upon this schedule. [H. 403.] Matusow was not told that February 1 was the last date for filing a motion for new trial in any of the cases in which he had testified. [H. 403.]

Tentative agreement was reached on these terms at the first meeting but Cameron & Kahn said they wanted to sleep on it. [H. 379.]

There was no talk of Jencks or of affidavits at the first meeting. Matusow did not trust Cameron & Kahn and therefore did not tell them his full intentions. [H. 380.]

41. October 25, 1954—Matusow had conservation with Mr. Daly of the Department of Justice. [H. 427.]

This conversation was over the telephone and dealt with the Bishop Oxnam incidents as well as the possibility that Matusow had given false testimony. [H. 427.] Matusow told Daly that if Oxnam had reported Matusow as saying that he had lied, Oxnam was wrong. [H. 428.] Matusow made an appointment to see Daly but failed to keep it. [H. 428.] Matusow admits that he was very evasive with Daly. [H. 428.] He told Daly that he never again intended to testify. [H. 430.] At that time he had in mind eventually preparing affidavits in the Jencks and Flynn cases. [H. 432.] He was evasive because he did not trust the Department of Justice, believing it to be corrupt. [H. 432.]

42. October 26, 1954—Matusow signed his first contract with Cameron & Kahn. [G-15; H. 383-385.] Kahn called Matusow on October 26, the day following the meeting at the Hotel Delmonico. [H. 400.] At Kahn's invitation Matusow went to Kahn's home at Croton, New York, and there signed the contract. [H. 395-400.] At the time the contract was signed Kahn advanced Matusow $250 in cash. This was to permit Matusow to get an apartment so that he could work in privacy. [H. 381, 401.] Matusow moved into this apartment on or about November 1, 1954. [H. 402.]

When this contract was signed the projected size of the book was 60,000 words, amounting to approximately 350 pages. It was planned to sell for between $4 and $4.50. [H. 648.] Later the plans were changed because the book amounted to only 256 pages. This sells in the conventional trade edition for $3. [H. 648.] The changes in the contractual arrangement necessitated by this are embodied in the supplemental agreement marked G-16. [H. 385-395.]

Under Matusow's royalty arrangements he would receive $700 from the sale of 10,000 copies of the book. [H. 410.] The final royalty arrangement is set forth in paragraphs VII, VIII, IX and X of the agreement of February 1, 1955. [G-16; H. 388-390.]

43. October 29, 1954—Matusow held conversation with Messrs. Connors and Koffsky of the Department of Justice. [H. 428.] This conversation occurred three days after signing the contract with Cameron & Kahn. [H. 428.] They asked Matusow concerning the Oxnam and Brown incidents, and Matusow was "kind of evasive to them." [H. 428.] Matusow feared that they had approached him in order to get evidence against him. [H. 429.] Matusow told Connors that he never again intended to testify. [H. 430.] Matusow does not recall whether he told these men that he had not lied under oath; if he did tell them that it was false. [H. 430.]

44. November, 1954—Matusow's work on the book, "False Witness," began at or about this time. [H. 85.] The first step was to dictate material to a tape in the presence of Kahn. These were often in the form of conversations with Kahn. [H. 90.] This process began early in November, 1954, and ran into mid-December, 1954. [H. 91, 414.] In making these recordings Matusow kept information from Kahn because he did not trust him [H. 92], and as a consequence some of the references to Jencks were deliberately false. [H. 93.] Matusow told Kahn he would withhold information from him until he received assurances that it would not be made public until Matusow agreed to it. [H. 93-94.] These recordings were transcribed in two copies, and Matusow edited the original only, the other copy going to Kahn. [H. 96-97.] Kahn was present at Matusow's

suggestion. [H. 404.] Kahn was present on all occasions except one. [H. 404.] It was Kahn's un-edited copy that was produced before the New York grand jury and again in this case. [H. 97.] Kahn's role in this work was to ask questions for clarification. [H. 340, 341.]

Witt kept current on these developments through Kahn and received copies of the tape recordings from Kahn. [H. 781.] He gave Kahn a copy of Matusow's testimony at Jencks' trial so that the same could be furnished to Matusow. [H. 781-782.]

45. December 14, 1954—Matusow met Witt at the latter's office. [H. 105, 784.] This meeting was pursuant to appointment requested by Matusow, arranged by Kahn. [H. 105.]

Matusow on this day agreed that his chapter on Mine-Mill could be shown to Mine-Mill's executive board in return for the assurance that no use would be made of it until the book was ready or until Matusow otherwise gave permission. [H. 105.] Matusow discussed with Witt his conversations with Oxnam and Brown told Witt that he thought both of these men had violated his confidence. [H. 672.] In response to Matusow's request, Witt agreed to keep confidential whatever Matusow told him. [H. 673, 783-786.]

Witt and Matusow also talked about a possible prosecution against Matusow for perjury. This conversation extended over several meetings, both before the affidavit in this case was signed and afterwards. [H. 350, 353-354, 795-796.] Matusow was not persuaded to sign the affidavit because of these conversations. [H. 355.] Witt told Matusow that he would not discuss the Jencks case with Matusow because he would not leave any grounds

for the claim that he had influenced Matusow in any way. [H. 673, 788, 790.]

It was on this same date, viz., December 14, 1954, that Matusow completed dictating to the tape with Kahn. The transcriptions marked G-27, 28 and 29 [at H. 692-697] were dictated on this date. [H. 689-692.] Included in these recordings is the following passage:

> "I knew Jencks was a Party member and I said so. I can't say here that Jencks wasn't a Party member after he signed the affidavits because I know that he was. But I shouldn't have testified. That's the important thing. K: Why do you say you know he was? M: I say I know he was—I mean in this way. Men like Ben Gold who have been indicted on the same charge. He officially resigned from the Communist Party. Or he could have. Let's put it that way. But in—to my mind—then, in my thinking, it made him no less a Communist because he put a piece of paper down and said I'm no longer a member. As far as I was concerned, Jencks was still under Communist Party discipline. And there's a difference. He legally, according to the law, might not have been a member of the Party. I didn't know the difference. Jencks didn't change his thinking because he issued that scrap of paper." [H. 696-697].

46. "About the first of the year," 1955—Matusow completed the chapter in the book "False Witness" dealing with Jencks. [H. 103.]

47. The first week of January, 1955—Matusow prepared the work outline marked G-17. (Apparently marked for identification only. [H. 415.]) He did this alone and gave a copy to Kahn. He did it in order to organize the material. [H. 415-416.]

48. January 15, 1955—Matusow completed a draft of the manuscript for "False Witness." [H. 568.] The portion of the draft marked G-23A was written between December 1, 1954, and January 15, 1955. It pertains to Jencks. [H. 681.] G-23A reads as follows:

> "Jencks was not alone. Others have been indicted for the same charge. Accused of being members of the Communist Party after they had signed the non-Communist affidavit of the Taft-Hartley Law. Jencks could have been a Communist Party member, yes. I had no way of knowing it. And I didn't care. Jencks had been a Communist Party member and I presumed he had submitted his resignation as others had done prior to his signing the non-Communist affidavit. But, to my mind at the time, a piece of paper didn't make him any less a Communist." [H. 684.]

49. January 16 or 17, 1955—Matusow prepared draft of affidavit in Jencks case. He dictated it at home and Kahn brought him a transcription. [H. 84.] By this time the book had been completed. [H. 85.]

Witt worked on the affidavit in this fashion: He drafted a form of the affidavit, including a summary of the testimony that had been given in the Jencks trial, leaving blank spaces in the form for Matusow to fill out in his own language his recantation. [H. 788.] Witt told Matusow that he did not want to suggest the language of the recantation and did not want to discuss it. [H. 788.] The recantation language in the affidavit is Matusow's. [H. 788-789, 809-811.]

50. January 20, 1955—Matusow executed the recantation affidavit in this case. [H. 789.]

51. Week of January 24, 1955—Executive Board and officers of Mine-Mill made further arrangements with Kahn concerning publication of Matusow's book. The union agreed to pay Kahn an additional $2,000 by way of a further advance order of copies of the book. This made a total advance order of 6500 copies for which the union paid $3,250. [H. 803.] At this time the union also approved plans for publicizing and selling the book. [H. 453 ff.] In this connection it is to be noted that Mr. John Clark, president of Mine-Mill, placed this meeting on "January 4th." [H. 450.] The date there stated may be a reporter's error. In any event the date seems clearly erroneous since at that time Matusow had not prepared his last work outline or his first draft manuscript. (See items 47 and 48 above.)

APPENDIX III.

Opinion of Judge Bazelon in Gold v. United States (C. A., D. C.), No. 12352, Opinion Filed April 19, 1956.

CLERK'S OFFICE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12352

BEN GOLD, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

Statement of Circuit Judge Bazelon's reasons for voting in favor of reversal of the judgment of the District Court on appeal in the above-entitled case.

Filed April 19, 1956

Mr. Harold I. Cammer, of the bar of the Court of Appeals of New York, *pro hac vice,* by special leave of Court, and *Mr. Joseph Forer,* with whom *Mr. David Rein* was on the brief, for appellant.

Mr. Joseph Lowther, Assistant United States Attorney, with whom *Messrs. Harold D. Koffsky* and *E. Brandon Alvey,* Attorneys, Department of Justice, were on the brief, for appellee. *Messrs. Leo A. Rover,* United States Attorney, and *Lewis Carroll,* Assistant United States Attorney, also entered appearances for appellee.

BAZELON, *Circuit Judge:* I was a member of the division of this court which originally heard this appeal from a conviction on two counts of filing a false non-Communist affidavit. Thereafter a rehearing in banc was ordered by the court, sua sponte. The rehearing culminated in an order, on March 9, 1956, affirming the conviction by an equally divided vote and reserving for each judge the right to file a "statement of his vote and his reasons." I choose to state my views because important issues vitally affecting the administration of justice are involved.

As a condition for making the processes of the National Labor Relations Board available to a labor organization, § 9(h) of the Taft-Hartley Act requires that each officer of the labor organization file annually with the Board a non-Communist affidavit stating that

> "he is not a *member* of the Communist Party or *affiliated* with such party, and that he does not believe in, and is not a member of or *supports* any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods."[1]

A specific provision of § 9(h) makes false affidavits punishable under 18 U.S.C. § 1001 (commonly known as the false statements statute), which declares it unlawful "in any matter within the jurisdiction of any department or agency of the United States" to "knowingly and willfully" make or use "any false writing . . . knowing the same to contain any false . . . statement . . . ."[2]

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[1] 61 STAT. 146 (1947), 29 U.S.C. § 159(h) (1952), emphasis supplied.

[2] 62 STAT. 749 (1948), 18 U.S.C. § 1001 (1952). That part of § 1001 dealing with false statements was added by the Act of June 18, 1934, 48 STAT. 996. In the general revision of the Criminal Code in 1948, § 1001 emerged from § 35 of the Criminal Code (18 U.S.C. § 80), as amended by the Act of 1934. In that revision, 18 U.S.C. § 80 was split up. The portion relating to false claims against the Government now appears in 18 U.S.C. § 287, the so-called false statements part in 1001. 62 STAT. 698, 749. The legislative history of §1001 is traced in United States v. Gilliland, 312 U.S. 86, 93-95 (1941). See also United States v. Bramblett, 348 U.S. 503, 507 (1955).

By the passage of § 1001, Congress intended to reach statements which, because they were not under oath required by an act of Congress, were not subject to prosecution under the existing perjury statute, now 18 U.S.C. § 1621. S.REP.NO. 288, 73d Cong., 2d Sess. (1934); H.R.REP. No. 829, 73d Cong., 2d Sess. 1-2 (1934); see also 78 CONG. REC. 2858, 2859, 3724 (1934).

While serving as president of the International Fur and Leather Workers Union, on August 30, 1950, appellant Gold filed the required affidavit. A prosecution under § 1001 followed, charging in three separate counts that Gold lied when he swore that he was not a member of the Communist Party, or affiliated with it, or a supporter of "any organization that believes in or teaches the overthrow of the United States Government by force or by any illegal or unconstitutional methods." After a trial by jury, he was acquitted on the "affiliation" count and convicted on the "membership" and "support" counts.

I.

One of the grounds for reversal urged by Gold relates to the trial court's refusal to apply the rule of evidence in perjury cases,[3] which bars a conviction on the uncorroborated testimony of one witness.[4] The refusal was based on the premise that only "perjury," brought under 18 U.S.C. § 1621 (1952),[5] and not charges of false state-

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[3] Fisher v. United States, — F.2d — (9th Cir. Feb. 15, 1956), the only case directly in point, held the rule inapplicable. The issue arose, but was not decided, in Todorow v. United States, 173 F.2d 439, 443 (9th Cir. 1949). Cf. Bridges v. United States, 199 F.2d 811 (9th Cir. 1952); Miranda v. United States, 196 F.2d 408, 410 (9th Cir. 1952).

[4] Weiler v. United States, 323 U.S. 606 (1945); Hammer v. United States, 271 U.S. 620 (1926); Young v. United States, 94 U.S.App.D.C. 54, 59, 212 F.2d 236, 241, *cert. denied*, 347 U.S. 1015 (1954).

[5] That section provides: "Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully

ments otherwise proscribed by law, are within the centuries old rule.

The "continued vitality" of the perjury rule has been recognized by the Supreme Court in the last decade,[6] despite criticism that the rule has outlived its usefulness.[7] "An oath against an oath" will not support a conviction. The Government must "establish the falsity of the statement alleged to have been made by the defendant under oath, by the testimony of two independent witnesses or one witness and corroborating circumstances."[8] The evidence must be "strong, clear, convincing and direct."[9] It must establish "the fact to be proved without the necessity for . . . inference."[10] This is in contrast with circumstantial evidence "which establishes the fact to be proved only through inference based on human exper-

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and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury . . . ." 62 STAT. 773 (1948).

The perjury statute, now § 1621, first appeared in § 5392 of the Revised Statutes, which "was a substitute for a number of statutes in regard to perjury and was phrased so as to embrace all cases of false swearing whether in a court of justice or before administrative officers acting within their powers . . . ." United States v. Smull, 236 U.S. 405, 408 (1915).

[6] Weiler v. United States, 323 U.S. at 609.

[7] 7 WIGMORE, EVIDENCE §§ 2040, 2041 (3d ed. 1940).

[8] Weiler v. United States, 323 U.S. at 607.

[9] United States v. Neff, 212 F.2d 297, 307 (3d Cir. 1954).

[10] Radomsky v. United States, 180 F.2d 781, 783 (9th Cir. 1950); see also United States v. Nessanbaum, 205 F.2d 93, 97 (3d Cir. 1953); State v. Riggs, 61 Mont. 25, 53-55, 201 P. 272, 281 (1921). There must be evidence of a direct nature presented by one witness before circumstantial evidence may serve as corroboration. See United States v. Hiss, 185 F.2d 822 (2d Cir. 1950), *cert. denied*, 340 U.S. 948 (1951).

ience that a certain circumstance is usually present when another certain circumstance or set of circumstances is present."[11]

I think appellant was entitled to the protection of the perjury rule.[12] A prosecution for "false statement" under § 1001 is virtually identical with one for "perjury" under § 1621. Falsity is the essential element in each.[13] Cf. *Hammer* v. *United States*, 271 U.S. 620, 629 (1925). Ordinarily there is one significant difference between the two in that the "false statement" to be prosecuted under § 1001 need not be made under oath. But this difference is absent in the present case. The defendant's non-Communist affidavit was made, and had to be made, under oath. That is the nature of an affidavit. The Government must prove the oath as an element of the offense. But that Congress specifically required false 9(h) affidavits to be prosecuted under § 1001, this case could as easily have been prosecuted under the perjury statute as under the false statement statute.[14] There have been

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[11] Radomsky v. United States, *supra* note 10.

[12] Weiler v. United States, 323 U.S. at 611.

[13] That the offense of swearing falsely in an affidavit is basically the same as swearing falsely before a judicial tribunal is recognized by courts-martial procedure. The Manual for Courts-Martial, 1951, by its terms "assimilates the requirements of proof of perjury to the offense of false swearing." United States v. Gomes, 3 U.S.C.M.A. 232, 239 (1953). *False swearing*, according to the Manual, embraces "giving false testimony in a judicial proceeding . . . or in making a false oath to an affidavit." Par. 213d(4). *Perjury* consists of "giving in a judicial proceeding . . . any false testimony . . . ." Par. 210.

[14] Indeed, false swearing in a 9(h) affidavit has been referred to as "perjury" by Justices Frankfurter and Jackson. American Communications Ass'n v. Douds, 339 U.S. 382, 420, 436 (1950). Justice Jackson said: "The only sanc-

many prosecutions and convictions under the perjury statute for false writings required by law to be under oath and voluntarily submitted to Government departments and agencies.[15] Some of these false writings have been affidavits.[16] There is no reason why a person charged with perjury under the name of false statement should be entitled to fewer safeguards than a person charged with perjury under the name of perjury.[17]

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tion prescribed, and probably the only one possible in dealing with a false affidavit, is punishment for perjury." *Id.* at 436.

[15] These cases antedate § 1001, the false statement statute. *E.g.*, United States v. Smull, 236 U.S. 405, 408 (1915); Johnson v. United States, 26 App.D.C. 128 (1905); United States v. Abelow, 14 F.Supp. 304 (S.D.N.Y. 1936); United States v. Crandol, 233 Fed. 331 (E.D.Va. 1916); Ralph v. United States, 9 Fed. 693 (N.D.Ill. 1881); United States v. Hampton, 101 Fed. 714 (4th Cir. 1900). See also United States v. Morehead, 243 U.S. 607, 609-10 (1917); Boehm v. United States, 123 F.2d 791 (8th Cir. 1941).

[16] *E.g.*, United States v. Smull, 236 U.S. 405 (1915). When, as here, the affidavit is sworn to before a notary, a state officer, 1621's requirement that the oath be taken before a "competent tribunal, officer or person" is satisfied. United States v. Morehead, 243 U.S. 607, 617 (1917).

[17] Legislative history of § 9(h) does not show why Congress specified prosecution under § 1001 rather than § 1621. The bills as introduced in the House and Senate did not include a penalty provision. *E.g.*, H.R. 3020, 80th Cong., 1st Sess. § 9(f)(6) (1947) (as passed by the House); § 9(h) (as passed by the Senate). It was not until the Conference Committee reported out the bill that any mention was made of § 35A of the Criminal Code, the precursor of § 1001. H.R. Rep. No. 510, 80th Cong., 1st Sess. 12 (1947). But there was no discussion of this point in either the Conference Committee Report, *id.* at 49, or in congressional debate on the bill, 93 CONG.REC. 6447 (1947).

When § 9(h) was enacted in 1947, heavier penalties could

I turn first to describe the evidence and then to discuss whether it is sufficient, under the perjury rule, to sustain the verdict on either the "membership" or "support" count of the indictment.

II.

Appellant was an open and avowed member of the Communist Party for thirty years prior to August 24, 1950. He had attended a revolutionary training school, the Lenin Institute of Moscow, in 1930-31, and was a member of the governing body of the Communist Party from 1936 to 1948. But on August 24, 1950, he submitted the following written resignation:

> Gus Hall, National Secretary
> Communist Party, U.S.A.
> 35 East 12th Street
> New York, N. Y.
>
> Dear Gus:
>
> I am herewith submitting my resignation from, and severing my affiliation with, the Communist Party.
>
> Please acknowledge by return mail.
>
> Fraternally yours,
> Ben Gold

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be imposed under § 1001 than under § 1621. At that time the maximum penalties for conviction under § 1001 were imprisonment for ten years and a fine of $10,000. 48 STAT. 996 (1934). In 1948 the term of imprisonment was reduced to five years, the $10,000 fine being retained. 62 STAT. 749. See Reviser's Note, 18 U.S.C. §287 (1952). Both before and after 9(h) became law, the maximum penalties for conviction under § 1621 have been imprisonment for five years and a fine of $2,000.

Five days later, on August 29, 1950, appellant executed the non-Communist affidavit in issue here. He filed it on August 30, 1950. At the same time he issued a lengthy public statement explaining his resignation, which he afterwards published in the September 1950 issue of his union magazine, "Fur and Leather Worker." The statement included the following:

> "I have resigned from the Communist Party. I was a member of the Communist Party for almost 30 years.
>
> "The Congress of the United States denies me my constitutional right to belong to the Communist Party and at the same time to hold office in a trade union.
>
> ". . . Although the Communist Party is a legal party, the Taft-Hartley slave labor act states that a union officer cannot be a member of that Party.
>
> • • • •
>
> "Our union is now compelled to comply with this law in order to defend our organization and the conditions of our members against the raiding, wrecking and strike breaking activities of the treacherous top officials of CIO and AFL.
>
> • • • •
>
> "As a member of the Communist Party for 30 years, I found the thinking of the members of the Communist Party, its program and activities determined by one, and only one, burning desire—to serve the best interests of labor and the people to end the cruel exploitation of the working people, racial hatred and bigotry, and to build up an economically secure, politically free, united, democratic and peaceful America.
>
> "Neither I nor the Communist Party ever believed in or advocated the overthrow of any democratically-elected government by force and violence.
>
> "Workers, trade union members, progressives, liberals and Communists have a true appreciation and love for democracy. They believe in the Four Freedoms: Freedom from Want, Freedom from Fear, Freedom of Speech and Freedom of Worship. These.

freedoms can exist only in democratic countries. In police states under ruthless dictatorships, trade unions are outlawed, true liberals, progressives and Communists are jailed and their parties banned. Therefore, honest and true labor leaders, liberals and progressives and Communists are the staunchest fighters for democracy and democratic liberties.

• • • •

"I have resigned from the Communist Party, but I do not give up my belief in true democracy.

"I have complied with the Taft-Hartley Law as directed by my union, but I shall continue to fight for repeal of this slave labor law and for the re-enactment of the Wagner Act."

Appellant served as a member of the United May Day Committee from 1935 to 1940, and in May 1951 and 1952 he marched with his union and spoke at May Day parades.[19]

The rest of the Government's case consisted of opinion testimony by seven ex-members of the Communist Party who were presented as expert witnesses on Party teachings.[20] Five had separated from the Party at various times from 1929 through 1948. Only two, Harper and Lautner, were members as late as 1950. None of the seven had seen or talked to appellant after 1949; two, Harper and Budenz, had never seen him, and two others, not later than 1929 and 1931. The testimony of all may be summarized as follows:

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[19] The Government does not contend that the content of the speeches has any relevance to either count.

The Government also presented evidence that Gold and his union were active in the defense of Irving Potash, one of the eleven Communist leaders convicted of violating the Smith Act, see Dennis v. United States, 341 U.S. 494 (1951), but does not rely upon it in this appeal.

[20] Three were paid employees of the Department of Justice, compensated on a per diem basis. Another had "joined" the Communist Party at the behest of the F.B.I.

Public Announcement. Three of the ex-Party members[21] testified that Gold's public announcement of his resignation, particularly the statement

> "Neither I nor the Communist Party ever believed in or advocated the overthrow of any democratically-elected government by force and violence"

and

> "I have resigned from the Communist Party, but I do not give up my belief in true democracy"

was couched in "Aesopian language," which the Party used to convey to its members a hidden meaning that would not be apparent to the uninitiated. They stated that, in the lexicon of Communism, the phrases "true democracy" and "democratically-elected government" refer to the dictatorship of the proletariat or the Soviet Union. Not only did these witnesses express their opinions on the Party meaning of these and other terms, but they were permitted to testify, in addition, that Gold's use of these terms in the announcement of his resignation was a reaffirmation of his membership in the Party.[22]

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[21] These were Gitlow, Johnson and Lautner who had left the Party in 1929, 1940, and January 1950, respectively.

[22] On this point, witness Gitlow's testimony is typical:

"Q. Mr. Gitlow, calling your attention again to the paragraph that reads 'I have resigned from the Communist Party, but I do not give up my belief in true democracy,' do you have an opinion as to whether or not that paragraph contains the use of language which you described to the jury yesterday as having double meaning? A. It does.

"Q. And can you tell these ladies and gentlemen what the double meaning is and what in the language therein contained constitutes the double meaning? A. Yes; the words 'true democracy'.

"Q. Go ahead, sir. A. 'True democracy', in the Communists' lexicon, exists only under the dictatorship

On the other hand, the defense showed that Gold had many times used these terms in their ordinary sense and had often referred to the United States as a democracy.

The "Can't Resign" Theory. All seven of the prosecution's witnesses testified that it was the uniform policy of the Party not to permit members, particularly "effective" members or leaders, voluntarily to leave the Party. Termination of membership, they said, could be accomplished only through expulsion. Two of these witnesses, however, stated that they themselves had quit. If, despite the general policy, a member attempted to resign, the witnesses testified that he would be denounced and abused by the Party press, notably the Daily Worker. It was their opinion that failure of the Worker to "abuse" appellant in reporting his resignation proved that appellant had not terminated his membership.[23]

Appellant's Participation in May Day Activities. Three Government witnesses who had left the Party in

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of the proletariat.

"Q. Does that paragraph contain any language with respect to membership in the party, in the double meaning that you described? A. It does.

"Q. What is that? A. It is a reaffirmation of membership in the Communist Party."

[23] Lautner, for example, testified: "An entirely different type of article would have appeared in the Daily Worker, in which Ben Gold would have been exposed as an enemy of the Communist Party, and the party memberhip as a whole would have been warned that 'From now on, keep away from Ben Gold, increase your vigilance, and close ranks in the Party and carry out the party policies towards this person.'"

Appellant's continued membership was also proved, the Government says, by the appearance, subsequent to the resignation, of articles in the Daily Worker which referred to appellant in "favorable" rather than unfavorable terms. The testimony was that the Worker would not have carried favorable references if appellant had resigned.

1929 (Gitlow), 1940 (Johnson), and 1950 (Lautner), testified that, in their opinion, the annual May Day activities were organized by and were under the "domination and control" of the Communist Party. It was the Party, they said, which determined who the speakers should be. In the opinion of one witness, the Party would not allow a person who had "broken" with the Party to speak at a May Day Parade. The witnesses admitted on cross-examination, however, that non-Communists and non-Communist organizations were encouraged to participate.[24]

III.

Here, as in every perjury case, the gist of the offense is the alleged "contradiction between the accused's oath and his belief . . . ."[25] To establish this contradiction requires proof of (1) the "falsity of the testimony and [2] the lack of a belief in its truth. Generally, a belief as to the falsity of testimony may be inferred by the jury from proof of the falsity itself."[26] As I have pointed out, circumstantial evidence is not enough; there must be direct evidence[27] which, if believed, conclusively establishes falsity.

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[24] Gitlow, for example, said: ". . . the Communist Party did permit sympathizers of the Communist Party . . . to speak at Mayday affairs of the Communist Party." Lautner stated that the Party tried to get all kinds of mass organizations to march.

[25] Remington v. United States, 191 F.2d 246, 249 (2d Cir. 1951).

[26] Young v. United States, 94 U.S.App.D.C. 54, 59, 212 F.2d 236, 241, *cert. denied*, 347 U.S. 1015 (1954).

[27] Remington v. United States, 191 F.2d at 249.

A. *The Membership Count*

The statute appears to contemplate three different degrees of relationship with the Communist Party, or an organization advocating overthrow of the Government by force and violence—membership, affiliation, and "support." Membership is more than affiliation, which is a "working alliance to bring the program [of the organization] to fruition."[28] Membership connotes a formal tie with or status in the Party, proof of which depends on the crucial "act of joining." *American Communications Ass'n* v. *Douds*, 339 U.S. 382, 411 (1950).

Illustrative of the nature of the direct evidence required to establish this crucial act is the showing the Government made in *Bridges* v. *United States*, 199 F.2d 811, 834 (9th Cir. 1952), *reversed on other grounds*, 346 U.S. 209 (1953). There a conviction for falsely denying, in a naturalization proceeding, membership in the Communist Party was sustained on proof that the accused filled out an application for membership which was turned in to Party headquarters, agreed to assume a new name, paid dues to a unit secretary, had a Communist Party book, admitted membership in the Party at a public meeting, attended a national convention of the Party, and was elected to the national committee. The Court rejected the notion that membership could be proved by "mere association" with the Party, approval of some or all of its aims or activities, sympathy with its programs, contributions of money, or active cooperation with its activities.[29] Though such conduct may reflect "affiliation"

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[28] Bridges v. Wixon, 326 U.S. 135, 144 (1945).

[29] See also United States v. Reimer, 79 F.2d 315 (2d Cir. 1935), where attendance at a meeting, signing and turning in an application form, and payment of an initiation fee, *inter alia*, were held to establish at most "sympathy" for the Party, and to fall short of proving "affiliation" and, a fortiori, membership.

or "support," it is not sufficient to show membership. See *Bridges* v. *Wixon*, 326 U.S. 135, 143 (1945).

The issue here is not whether appellant ever joined the Party, but whether he retained an actual, perhaps secret, membership after he resigned. The evidence required to establish continued membership after resignation should be comparable in quality to that required for "an act of joining."[30] Section 9(h) appears to recognize that a man may sever his membership without giving up his belief in some or all of the objectives of the Party; he may be an adherent by conviction without being one by membership. This appears from the statute's reference to affiliation and support as grounds for denying Board facilities.

When a man has been an avowed member of the Communist Party as long as Ben Gold, a purported resignation for the express purpose of enabling his union to avail itself of N.L.R.B. facilities is bound to be viewed with suspicion. But we must recognize the possibility of a genuine choice to leave the Party in order to stay with the union. The very object of § 9(h) is to stimulate such a choice.[31] As the Supreme Court said in *American Communications Ass'n* v. *Douds*, members of the groups described in § 9(h) "are free to serve as union officers if at any time they renounce the allegiances which constituted a bar to signing the affidavit in the past."[32]

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[30] *E.g.*, that one continued to pay dues to the Party, or permitted the Party to retain his name on its current books; or took an active part in formulating the Party's programs and directing its activities; or admitted a secret membership; or was told by the Party leaders to engage in Party activities secretly.

[31] In addition, of course, the penalty attached to 9(h) is designed to compel those who could not or would not resign their Communist allegiance to resign or be forced from their union positions.

[32] 339 U.S. at 414.

There is danger that long-continued past membership in the Communist Party, plus an asserted presumption of continuity, may obliterate the presumption of innocence that should prevail in a criminal case and place the burden of proof on the defendant. Great care must be taken to assure that present membership is proved by evidence of the required amount and quality. Such evidence is lacking in this case. There is no direct proof that appellant was a member on August 30, 1950, when he filed his affidavit, or at any later time. His public announcement of his resignation, and his participation in the May Day parades of 1951 and 1952, are at most only circumstantial evidence that he was still a member.

Read as ordinary English, the public announcement of the resignation does not contradict the fact of resignation but confirms it. If the form of the announcement can be regarded as indirect evidence of continuing membership, this is only because of the opinion testimony of ex-Communists who translated so-called Aesopian language, particularly appellant's affirmation of continued belief in "true democracy," and said that words like "democracy," "true democracy," and "democratically-elected government," as used in the announcement, referred to the Soviet Union.

The admissibility of this testimony is challenged on the ground that the opinion rule bars the use of expert testimony to define ordinary terminology.[33] Appellant says that rule has particular force here because (1) appellant was not shown to have used the terms in their special sense, and (2) the translation was not based on a written lexicon. But I think the court rightly admitted this evidence. The witnesses had qualified as experts on Party teachings. They said the terms used had a special meaning for Communists. In view of appellant's admitted thirty-year membership in the Party, it was not

[33] 7 WIGMORE, EVIDENCE § 1955 (3d ed. 1940).

unreasonable to permit the jury to infer that he was using these terms in their special sense. In *United States* v. *Dennis*, 183 F.2d 201 (2d Cir. 1950), *affirmed*, 341 U.S. 494 (1951), the Court held that opinion evidence was competent to translate terms such as "Marxism-Leninism," "revisionism," "opportunistic error" and "exceptionalism," because they had "an accepted conventional meaning among members of the Party."[34]

But the opinion testimony of the experts does not provide the required direct proof of concealed membership. Assuming the accuracy of the experts' translation, appellant's statement "I have not given up my *belief* in *true democracy*" might mean no more than that he had not given up his belief in the Soviet Union or the dictatorship of the proletariat. This belief, if proved, is not direct proof of Party membership.

Nor was direct proof supplied by the further testimony of some of the experts that, in their opinion, appellant meant he was still a member. This testimony was inadmissible. The witnesses could testify that his words were capable of this sense, but not that he used them in this sense. That testimony, which touched the ultimate issue in the case, was outside the scope of their expertise.[35]

Gold's appearance as a speaker at the 1951 and 1952 May Day parades is only indirect evidence, if any, of Party membership on August 30, 1950.[36] Lautner, who

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[34] 183 F.2d at 229.

[35] See Simmons v. United States, 92 U.S.App.D.C. 122, 124, 206 F.2d 427, 430 (1953); cf. Riley v. United States, — U.S.App.D.C. —, —, 225 F.2d 558, 559 (1955).

[36] Appellant's union had participated in the May Day parades since 1907, and the occasion was a traditional holiday for union members. Union members, both Communist and non-Communist, have always marched in the parades, and did so in 1951 and 1952. The evidence tended to show, on the other hand, that the Party controlled and dominated the organization of the celebration.

left the Party in January 1950, testified that in his opinion the key speeches in 1951 and 1952 would have been made by Party members, and that no one who had broken with the Party would have been allowed on the platform. As evidence that appellant was a member when he swore he was not, this involves the following inferences: (1) a man who left the Party in 1950 knew what qualifications were required of speakers at the 1951 and 1952 May Day parades; (2) since this man said the speakers were required to be Communists, and since Gold was a speaker, Gold was a Communist on those dates; (3) therefore Gold was a Communist on August 30, 1950.[37]

Aside from these "overt acts" of appellant, as interpreted by the "expert witnesses," the Government's case consisted of conclusory opinion testimony as to the general rules, teachings and tactics of the Communist Party, chiefly to the effect that the Party did not accept resignations and abused members who tendered them. Such general testimony is not direct evidence of what appellant did or did not do. If no one can effectively resign from the Party, no union officer with appellant's history can ever comply with § 9(h), and the statutory phrase "is not a member" is precisely equivalent to "has never been a member." This possibility *Douds* specifically rejects.

It follows that appellant is entitled to acquittal on the membership count.

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[37] The court's holding in United States v. Neff, 212 F.2d 297, 308 (3d Cir. 1954), with respect to the character of the corroborative evidence required is a fortiori applicable here: "Evidence tending to establish the probability of conduct is not enough; more than that is required; the path from the corroborating evidence must lead directly to the inevitable —not merely probable—conclusion of falsity. The corroborative evidence . . . must be equally strong and convincing as the direct testimony which would be regarded as sufficient proof."

B. *The Support Count*

The other count on which the appellant was convicted charged him with "support" of an "organization, namely, the Communist Party, which said Party taught the overthrow of the United States Government by force." He contends, and I agree, that the "support" clause of the affidavit required by § 9(h) means "support" of the "organization" in its objective of forcible overthrow. *American Communications Ass'n* v. *Douds* makes clear that § 9(h) was aimed at barring from union leadership adherents of the doctrine of forcible overthrow[38] because they "represent a continuing danger" of translating that belief into action by fomenting "disruptive political strikes."[39] The statute reaches these persons in two ways.

First, it specifically refers to members and affiliates of the Communist Party. Though the Party purports to be a political organization, the Supreme Court found no infringement of First Amendment rights because the Communist Party differs from other political parties in the nature of its program—chiefly its dedication to the principle of violent overthrow—and in the nature of its membership. Membership is akin to a conspiracy wherein "individuals who assume such obligations are chargeable, on ordinary conspiracy principles, with responsibility

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[38] "In enacting 9(h), Congress had as its objective the protection of interstate commerce from direct interference, not any intent to disturb or proscribe beliefs as such. Its manifest purpose was to bring within the terms of the statute only those persons whose beliefs strongly indicate a will to engage in political strikes and other forms of direct action when, as officers, they direct union activities." 339 U.S. at 407.

[39] 339 U.S. at 393.

for and participation in *all* that makes up the Party's program,'' [40] including the principle of violent overthrow.

Second, the statute aims at those whose adherence to the doctrine of forcible overthrow is shown not by an "act of joining'' but from the inference that they "believe'' in it or from evidence that they support an organization that "believes in or teaches'' it. Here Congress moved closer to the realm of First Amendment rights, since questions of "belief'' and "support'' turn so largely upon proof of an individual's opinions and views.

The Court's opinion in *Douds* resolved the conflict between the national interest, as embodied in the statute, and the individual interest by narrowly reading the portion of the oath dealing with belief.[41] The opinion makes clear that the terms of the oath cannot be construed so as to force, contrary to our basic traditions, "disclosure of attitude on all manner of social, economic, moral and political issues.'' [42] The only belief whose disclosure the

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[40] 339 U.S. at 432, emphasis supplied. And see Dennis v. United States, 341 U.S. 494, 498 (1951), where the Court cites with approval a Court of Appeals finding that the Party is rigidly controlled and that "Communists, unlike other political parties, tolerate no dissension from the policy laid down by the guiding forces, but that the approved program is slavishly followed by the members of the Party . . . .''

[41] Only three members of the Supreme Court joined in this opinion. Since the Court was equally divided as a result of the non-participation of three members, this opinion sustained the validity of the belief portion of the oath by affirming the Court of Appeals. Justices Jackson and Black dissented, primarily on First Amendment grounds. 339 U.S. at 442-45, 445-53. Justice Frankfurter dissented on the ground that, in certain respects, the second part of the oath, including the term "supports," was void for vagueness. *Id.* at 415.

[42] 339 U.S. at 410.

Court held could be forced, as a condition of union leadership, was a belief in violent overthrow. And the Court recognized that a serious constitutional question would be posed if the statute were read to "include all persons who might, under any conceivable circumstances," subscribe even to this belief.[43] Accordingly the Court construed the entire clause, in consonance with the dominant purpose of 9(h), to apply to persons and organizations believing in violent overthrow of the Government "as it presently exists under the Constitution as an objective, not merely a prophecy."[44]

The Court in *Douds* did not construe the word "support," except to hold that the word itself, in the context of 9(h), was not too vague for criminal purposes. I cannot, consistently with the First Amendment, read "support" more broadly than the Court said "belief" might be read. To "support" an organization ordinarily may have two meanings: (1) to aid or participate in its activities, as by contributing money; (2) to express belief in its objectives.[45] The words "support of an organization," in this case the Communist Party, broadly interpreted, apply to an expression of belief in any of the objectives of the Party, no matter how lawful.

This was the thrust of the court's instruction. The court gave the jury the following dictionary definition of "support":

> "To uphold by aid or countenance; to take the side or promote the cause of; to back up, as, for example, to support the administration; also, to uphold or defend as valid, right, just, etcetera; as, for example, to support a policy, even at the risk of life

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[43] *Id.* at 407.

[44] *Ibid.*

[45] Usually "support" in the first sense is a form of "support" in the second sense.

> or fortune, or as another example, to support the claim of." [Webster's New International Dictionary.]

Under that guide "support" might be found if, for example, a person upheld or defended as "valid . . . a policy," such as repeal of the Taft-Hartley or Smith Act, which policy merely happened to coincide with the policy of the Communist Party on those issues. Support might also be found on the basis of evidence that appellant "regarded May Day as an international labor holiday, opposed the McCarran, Velde, and McCarthy committees, had favored a second front during World War II, had denounced the 80th Congress, and had made a public appeal for funds for the legal defense of Smith Act defendants." [46]

The vice, for criminal purposes, of the broad dictionary definition was compounded by a second portion of the instruction, which followed the literal wording of the statute. The jury was told a conviction depended on the finding that appellant's

> "actions constituted support, as the word support had just been defined, of an organization which taught the overthrow of the United States Government by force, and that said support was being given by defendant on August 30, 1950."

If this interpretation of the statute prevails, once it is found that a "coincidental parallelism" [47] exists between some of an individual's views and some of the objectives of the Communist Party, the jury may convict him of false swearing if it thinks the Party advocates forcible overthrow of our Government, even though the individual does not "support" that advocacy. We should

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[46] Brief for appellant, p. 47.

[47] Justice Frankfurter, concurring in part and dissenting in part in American Communications Ass'n v. Douds, 339 U.S. at 422.

decline to read the statute in a manner which would make its constitutionality doubtful. We should hold that the "support of an organization" which the statute contemplates is support of "violent overthrow of the Government as it presently exists under the Constitution as an objective" of the organization, not support of other and entirely lawful objectives of the same organization.[48] It is this reading which must prevail in a prosecution for false swearing based on the statutory oath. This is no more than the traditional requirement of proof of aiding and abetting, a concept closely akin to support, that the aider and abettor must not only know of but share in the unlawful purpose of his principal,[49] or of conspiracy, where all who conspire must share the unlawful purpose of the joint action.[50]

I find no direct evidence which would justify an inference that, on August 30, 1950, appellant supported the Party in the objective of violent overthrow of our Government as it presently exists. At most a legitimate inference can be drawn from appellant's participation in Party activities during the 1920's and 1930's[51] that he gave such "support" long before he signed the affidavit. There is no evidence, of the quality required to sustain a perjury conviction, to show that appellant adhered to

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[48] 339 U.S. at 407.

[49] Pereira v. United States, 347 U.S. 1 (1954); Nye and Nissen v. United States, 336 U.S. 613, 619, 620 (1949); Johnson v. United States, 195 F.2d 673, 675 (8th Cir. 1952); United States v. Peoni, 100 F.2d 401, 402 (2d Cir. 1938).

[50] United States v. Falcone, 311 U.S. 205 (1940); United States v. Peoni, 100 F.2d 401, 403 (2d Cir. 1938).

[51] It was shown, for example, that, in 1930-31, appellant, at the Lenin School in Moscow, took courses in insurrection, sabotage, overthrow of capitalist governments, use of poison gas, and studied maps of New York, Pittsburgh, Detroit and Gary to determine how to cripple a city.

that view when, or after, he resigned from the Party on August 24, 1950. His appearance as a speaker at May Day parades in 1951 and 1952 is not direct proof of adherence to that view. The Government concedes that the contents of his speeches are irrelevant.

His public announcement is capable of the construction that he was in accord with the lawful objectives of the Party.[52] It cannot be taken as direct evidence of a belief in or support of the objectives the statute proscribes.

I would, therefore, reverse the conviction on both the support and membership counts, and remand the case with directions to enter a judgment of acquittal.

IV.

Even if appellant were not entitled to a judgment of acquittal, there are at least two errors which would require reversal for a new trial.

A. An F.B.I. agent, investigating another case in which falsity of a non-Communist affidavit was also charged, telephoned or visited three members of the petit jury or their families during the trial and inquired whether they had received any "propaganda" literature. The impact of these contacts on the jurors involved, and those who heard about them was so prejudicial that its effect could not be erased, and was perhaps even enhanced by the hearing the court held to determine if any should be disqualified. *Remmer* v. *United States*, 350 U.S. 377 (1956), makes plain that the

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[52] *E.g.*, "As a member of the Communist Party for 30 years, I found the thinking of the members of the Communist Party, its program and activities determined by one, and only one, burning desire—to serve the best interests of labor and the people to end the cruel exploitation of the working people, racial hatred and bigotry, and to build up an economically secure, politically free, united, democratic and peaceful America."

court's refusal to declare a mistrial here is prejudicial error.

B. As I pointed out, *supra*, the opinion testimony that appellant's resignation statement was in fact his reaffirmation of party membership, was inadmissible to support the conviction. Even if there was other evidence upon which the conviction could be sustained, this opinion testimony was so highly prejudicial that its erroneous admission requires a new trial. The question whether or not appellant was still a member, or had resigned, was for the jury, not for the opinion of the witnesses. To permit witnesses to testify, as Budenz did, for example, that a certain sentence in appellant's resignation statement "is an assertion of continued membership in the Communist Party"[53] is in substance to transform the trial by jury into a trial by experts.

V.

Finally the case should also be remanded for a hearing on appellant's offer, which the trial court rejected, to prove that Government employees on the grand and petit juries were biased as a class.[54] My views on the grand jury issue are expressed in *Quinn* v. *United States*.[55] They are applicable with even greater force to the petit jury. A determination that Government employees are disqualified as grand jurors in this case would require dismissal of the indictment; disqualification as petit jurors would require a new trial.

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[53] See also note 22, *supra*.

[54] Thirteen members on the indicting grand jury were Government employees. Five Government employees and the wife of a Government employee were on the petit jury.

[55] 91 U.S.App.D.C. 344, 350, 203 F.2d 20, 26 (1952) (dissenting opinion).

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IN THE

Supreme Court of the United States

October Term, 1956.

No. 23

CLINTON E. JENCKS,

Petitioner,

vs.

UNITED STATES OF AMERICA.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

PETITIONER'S REPLY BRIEF.

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SUBJECT INDEX

PAGE

Point One. The F.B.I. reports prepared by Matusow contemporaneously with the transactions they record should have been produced to the trial court in the manner and for the purposes described 2

(a) The setting of the requests 2

(b) The importance of Matusow's testimony at the trial 3

(c) Petitioner's request at the trial for Matusow's reports should have been granted on this record 6

(d) Petitioner's request, at the hearing, for Matusow's reports should have been granted on this record 15

(e) The memorandum of Matusow's conversation with the F.B.I. agent at Santa Fe should have been produced as requested 18

Point Two. The Government has offered no tenable basis for sustaining the instruction on membership 20

Point Three. The Government has offered no tenable basis for sustaining the instruction on affiliation 25

Point Four. The Government has presented no justification for the failure to instruct on credibility of informers 27

Conclusion 29

TABLE OF AUTHORITIES CITED

CASES — PAGE

American Communications Association v. Douds, 339 U. S. 382 ..... 5, 20, 21, 26
Arnstein v. United States, 296 Fed. 946 ..... 10, 13
Baumgartner v. United States, 322 U. S. 665 26
Berger v. United States, 295 U. S. 78 9
Bird v. United States, 180 U. S. 356 28
Bollenbach v. United States, 326 U. S. 607 ..... 18, 23, 28
Bowe v. Commonwealth, 320 Mass. 230, 69 N. E. 2d 115 26
Bridges v. Wixon, 326 U. S. 135 ..... 4, 25, 26, 27
Bruno v. United States, 308 U. S. 287 28
Cantwell v. Connecticut, 310 U. S. 296 25
Carlson v. Landon, 342 U. S. 524 25
Christoffel v. United States, 200 F. 2d 734 13
Communist Party v. Subversive Activities Control Board, 351 U. S. 115 27
D'Aquino v. United States, 192 F. 2d 338 13
Ellicott v. Pearl, 35 U. S. (10 Pet.) 412 15
Fisher v. United States, 231 F. 2d 99 ..... 3, 12, 15, 20, 27
Fletcher v. United States, 158 F. 2d 321 28
Flynn case, 130 F. Supp. 412 27
Galvan v. Press, 347 U. S. 522 ..... 20, 21, 22
Gordon v. United, 344 U. S. 414 ..... 2, 3, 11
Hupman v. United States, 219 F. 2d 243 22
Lanzetta v. New Jersey, 306 U. S. 451 20
Little v. United States, 93 F. 2d 401 ..... 10, 13
Scanlon v. United States, 223 F. 2d 382 14
Schneiderman v. United States, 322 U. S. 665 26
Thomas v. Collins, 323 U. S. 516 25
United Public Workers v. Mitchell, 330 U. S. 75 25
United States v. Andolschek, 142 F. 2d 503 ..... 9, 10

PAGE

United States v. Beekman, 155 F. 2d 580 ..... 9, 11
United States v. Cohen, 145 F. 2d 82 ..... 11, 12
United States v. Coplon, 185 F. 2d 629 9
United States v. De Normand, 149 F. 2d 622 ..... 11, 13
United States v. Ebeling, 146 F. 2d 254 12
United States v. Grayson, 166 F. 2d 863 10
United States v. Krulewitch, 145 F. 2d 76 ..... 2, 3, 11, 12, 13
United States v. Lightfoot, 228 F. 2d 861 13
United States v. Reimer, 79 F. 2d 315 20
United States v. Simonds, 148 F. 2d 177 11
Wieman v. Updegraf, 344 U. S. 183 ..... 25, 26

MISCELLANEOUS

Chafee, The Blessings of Liberty (1956), pp. 95-97 27
6 Encyclopedia of Social Science, p. 449, Laski, Freedom of Association 26
New York Times, July 8, 1954, editorial 27
3 Wigmore, Evidence, Sec. 1042, p. 733 16
4 Wigmore, Evidence, Sec. 2094, pp. 466-477 28

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PETITIONER'S REPLY BRIEF.

The object of this Reply Brief is to correct impressions created in the government's brief concerning the key facts in the case which shape the posture of the question presented for decision and to comment upon the underlying policy and legal considerations raised by the argument of the United States. For ease of cross-reference we will subdivide this brief into the same points presented in Petitioner's Opening Brief.[1]

[1] "R." will refer to the printed record of the trial; "H." to the printed record of the hearing on motion for new trial; "Pet. Br." to petitioner's Opening Brief; "G. Br." to the brief of the United States.

POINT ONE.

The F.B.I. Reports Prepared by Matusow Contemporaneously With the Transactions They Record Should Have Been Produced to the Trial Court in the Manner and for the Purposes Described.

We confine this discussion to the Matusow reports although much of what is said would apply also to the Ford reports. Upon the trial record alone Matusow's testimony was more important than Ford's, and the subsequent motion for new trial gives to the Matusow reports an overriding importance in this area of the case.

(a) The Setting of the Requests.

These are reports made by Matusow contemporaneously with the transactions they purport to record and pursuant to the instructions of his employer, the F.B.I. They cannot be described in the government's words as "reports by or concerning [a government witness]." (G. Br. 26.) These reports are Matusow's statements and have a standing as extra-judicial declarations equivalent to an affidavit or signed statement given to an investigator. (*Compare, Gordon v. United States,* 344 U. S. 414; *United States v. Krulewitch* (2 Cir.), 145 F. 2d 76.) They are not reports *about* Matusow, prepared by others, and they are not the work product of any government agent, whether investigator or lawyer. These statements of the witness Matusow were prepared as records and reports of the transactions with the petitioner which were related in his testimony at the trial.

It is also important to emphasize that the reports which were the subject of petitioner's motion at the trial were the same reports which were the subject of petitioner's motion at the hearing. [See R. 295, 296; H. 663.] On each occasion the same documents were requested, re-

lating to the same transactions, Matusow's testimony concerning which had afforded the basis for petitioner's conviction.

Petitioner did not seek a large number of documents, nor a general exploration of the government's files. The period of Matusow's stay at the guest ranch where he purportedly had the conversations with petitioner was approximately three weeks. [R. 244-246.] Since he reported at least once a week [R. 290], the number of his reports could not have been far in excess of three. Moreover, petitioner requested only those portions of the statements dealing with the incidents recounted in the witness' direct testimony.

Finally, it is to be emphasized that the request made here was for the production of the documents to the trial court. It was asked that only those portions of the reports which the court found contradicted the direct testimony be furnished to the accused.

(b) The Importance of Matusow's Testimony at the Trial.

Because the importance of the witness to the prosecution has loomed large in decisions in this area (*Gordon v. United States, supra,* p. 417; *Fisher v. United States,* 9 Cir., 231 F. 2d 99, 104; *United States v. Krulewitch,* 2 Cir., 145 F. 2d 76, 77), it is necessary to examine closely the importance of Matusow to the prosecution. This will be evaluated in terms, first, of his providing the only post-affidavit evidence dealing with membership and affiliation, and, second, of the probative effect of what he said.

We directly controvert the government's assertions (G. Br. p. 27, n. 11) that there was other post-affidavit evidence. Matusow's is the only probative post-affidavit tes-

timony. There was no such other evidence which as a matter of law was probative on the issues of membership or affiliation. Ford's testimony was that up to September 1950 no "disciplinary action [was] taken by the Communist Party against the defendant, Clinton Jencks . . . in the presence of the defendant." [R. 119.] This has no value to show that petitioner remained in the Party. It does not say that Jencks was not expelled or removed from the Party by its action not in his presence. It does not purport to cover termination of his membership by withdrawal or resignation. Ford also testified that in the same period Jencks was not "replaced in his position on the State Board of the Communist Party." [R. 133.] That he was not "replaced" in no wise proves that petitioner continued in the position. In short, this testimony does not add one jot to Ford's evidence that he last saw Jencks at a meeting in late July or early August 1949.[2] [R. 194.] That was eight or nine months before the affidavit was signed and filed.

Another scrap of so-called post-affidavit evidence claimed by the government is Terrazas' testimony that petitioner urged his union brethren to read the *Daily People's World*. (G. Br. p. 28, n. 11.) But this proves neither membership nor affiliation. This Court rejected such evidence as proof of affiliation in *Bridges v. Wixon*, 326 U. S. 135, 146. Surely it can have no probative value to estab-

[2]Indeed the curious circuitousness of this testimony is most convincingly indicative that the government had no evidence that Jencks continued in the position Ford attributed to him. Ford and Jencks had been, according to Ford, co-members of the State Committee. Ford was competent to testify that Jencks remained a member after August 1949—if he had. The government apparently avoided this simple, direct approach because it would not have produced proof of the prosecution's case.

lish the more formalized relation of membership.[3] Finally, the government claims that there is post-affidavit evidence, other than Matusow's, in the testimony that petitioner spoke "concerning a nation-wide strike to be called in conjunction with the Mexican Miners Union." (G. Br. p. 28, n. 11.) But this testimony was stricken. [R. 353, 355.]

The only post-affidavit evidence having any probative value on the issues of membership and affiliation, therefore, is the testimony of Matusow. All other evidence was pre-affidavit. Given the principle laid down in *American Communications Association v. Douds*, 339 U. S. 382, 414, that past membership or affiliation is no bar to signing the affidavit after a severance of the old relationship, Matusow's testimony was key to the government's case. The prosecutor's observation that Matusow was "absolutely essential" [H. 13] is singularly apt.

It is strange indeed to find the government at this stage of the case attempting to minimize the probative effect of Matusow's testimony. (G. Br. pp. 37, 40, 41.) The Do-Day conversation (see Pet. Br. 12, 13) was especially damning and inflammatory. There Matusow attributed to Jencks a remark that the latter would convey the Do-Day notion to his "fellow Party members in Silver City," and that "he and other Communists" were conferring with the Mexican Miners Union on means for joint action to cut off or slow down copper production for the Korean war effort. It would be difficult to conceive of an ad-

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[3] It is difficult to divine what the government claims for the Terrazas testimony that petitioner asked his union members not to require the officers to sign the non-Communist affidavits. (G. Br. 28, n. 11.) The government concedes that it is "pre-affidavit". Surely opposition to signing these affidavits cannot support an inference of Party membership or affiliation.

mission of membership so explicit or a description of conduct more likely to arouse patriotic fervor.

It is plain that the entirety of Matusow's testimony was offered to relate four incidents in which Jencks purportedly made admissions of Communist Party membership, and the Do-Day conversation was only the most outspoken. (See Pet. Br. pp. 12, 13.) Unless the evidence had this purpose and effect, it had no place in the record at all. The government's assertion that at the trial Matusow did not "state that petitioner was a member of the Communist Party, or that petitioner had said that he was a member of the Communist Party" is unashamed cavil.

(c) Petitioner's Request at the Trial for Matusow's Reports Should Have Been Granted on This Record.

In brief, the record discloses a narrowly drawn request for production to the trial judge of certain prior statements of the witness. The trial judge was asked to inspect the statements and give to the accused only the portions that had relevance to impeach the witness. The request was made on the cross-examination of the witness whose testimony alone gave colorable sufficiency to the government's case.

The government seeks to justify denial of this request on the ground that it lacked the foundation of a prior showing of inconsistency between the statements and the trial testimony. Its assertion that at the trial "no attempt whatever was made to demonstrate that the prior statements of the witness were contradictory of his present testimony (G. Br. 29) is untrue, and petitioner has made no such concession. On the contrary, an effort was made to develop such contradiction which was frustrated *in*

limine by the witness' answer. This matter has been fully elaborated in our Opening Brief (p. 32) and need not be repeated.

The issue thus presented, is whether when the witness can neither affirm nor deny the existence of contradiction between his prior statement and his testimony, the defendant is to be deprived of the opportunity for impeachment. As we pointed out in our Opening Brief (pp. 31, 32), this kind of frustration could result from a loss of recollection which is either genuine or feigned. It would seem an unusually harsh rule that would deny an accused the opportunity for impeachment of the government's key witness when that witness, for whatever reason, is unable to say that his prior statement contradicts his testimony. For it is difficult to conceive of any other way in which the accused could develop, even in the most general terms, the contents of the prior statement sufficient to show the contradiction.

We cannot believe that the government is serious in urging that the procedure of asking that the prior statement be produced to the court for it to determine the existence of contradiction, would "unduly burden the trial courts". (G. Br. 31.) In the case of Matusow, three, perhaps four, documents were requested. Assuming that each document was three or four pages long, the amount of reading would not be great and the *in camera* inspection could obviously be disposed of during a recess. There would be little chance of other demands upon the court's time in the form of argument since the contents of the documents would not be available to the defense, and neither party would thus be in a position to argue the court's ruling. In any event, whatever interest there may be in lightening the burden of trial judges is overweighed

by the necessity for doing justice and creating the appearance of justice in our criminal courts. Most convictions result in jail sentences. The one here led to a sentence of five years. Human liberty, we submit, is too precious to permit such deprivation upon records where patently reliable instruments for uncovering truth are left unused upon such technicalities as the government here urges. This the more so where as here the witness fairly reeks of unreliability.

The government's argument that under the procedure here urged "the function of establishing the relevancy of the documents would be merely shifted from the defendant to the judge" (G. Br. 31) is wide of the mark. If the government's position were followed, the function of establishing relevancy would be shifted to the suspect witness, for it is only upon his word that his prior statement belies his trial testimony, that production to the court would be permitted. It is doubtful whether in any circumstance the search for truth should rest upon so slender a reed. But surely, in the circumstances of this case, where the word of a professional informer-witness alone determines the accused's guilt or innocence, and his cross-examination has cast heavy shadow upon his credibility (see Pet. Br. 26, n. 9), the search for truth will not depend upon what he will say as to the consistency or inconsistency between his trial testimony and his prior statements. Surely that search will not be halted merely because such a witness claims to have no memory of the contents of his prior statement.

The government seeks to take undue advantage of its sovereign position. We recognize (Pet. Br. 30, 31) that the government has certain limited interests in protecting the confidences of its papers and records. Petitioner's

request for the trial court's inspection of the disputed documents was designed fully to protect those limited interests. It must never be overlooked that in bringing the prosecution the government has waived its privileges as to any documents containing matters relevant to the issues at trial. (*United States v. Andolschek* (2 Cir.), 142 F. 2d 503; *United States v. Beckman* (2 Cir.), 155 F. 2d 580; *United States v. Coplon* (2 Cir.), 185 F. 2d 629.) To that extent, therefore, the government in this case for purposes of petitioner's request here under examination stands in no different posture from that of a private party.

But the nature of the government as sovereign and as a prosecutor casts upon it a greater burden than upon a private party. In this or any other prosecution the government's paramount interest is that justice be done. *Berger v. United States*, 295 U. S. 78, 88, 89. No greater service can be rendered to that end than to further the ascertainment of the facts upon which the individual's life or liberty is to be adjudged. Here it has been shown that the government possesses documents which, regardless of their contents,[4] contain important records related to the very transactions upon which it sought to predicate petitioner's guilt. Unless the government be required to produce them to the trial judge, as here requested, it is positioned to usurp *pro tanto* his authority to determine the scope and admissibility of evidence. For in those premises the government may disclose the papers that aid the prosecution and keep hidden those which harm it. Civilized standards of fair play reject such capricious power in any

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[4]For reasons already indicated, even the failure of the reports to mention the incidents described in the trial testimony would furnish important impeachment on the central question of petitioner's membership or affiliation. (Pet. Br. 27, n. 10.)

official. The trial of criminal charges is not a game of cat and mouse, and the lives and liberty of individuals are not sacrifices to the won and lost statistics of the prosecuting agency.

So gravely does the Second Circuit hold the government's responsibility in these premises, that it makes disclosure to the trial judge a condition of maintaining the action. Once initiated, the prosecution "must be conducted in the open". The government cannot suppress reports which, as here, are "founded upon those very dealings to which the documents relate, and whose criminality they will, or may, tend to exculpate." *United States v. Andolschek* (2 Cir.), 142 F. 2d 503, 506. And so demanding is this obligation that if it is not complied with "the prosecution will fail." *United States v. Grayson* (2 Cir.), 166 F. 2d 863, 870.

It follows from this that the area of discretion left to the trial judge is by no means as extensive or unlimited by legal principles as the government urges.[5] (G. Br. 25, 32.) For under the principles laid down by the Second Circuit, the government must, in circumstances similar to those at bar, turn the documents over to the court. Failure of the court to order it is reversible error. (See *United States v. Andolschek* and *United States v. Grayson, supra, United*

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[5]The principal cases relied upon by the government are inapplicable. (G. Br. 25.) *Goldman* involved a request for direct access by the accused of the "notes and memoranda made by the agents during the investigation" of the case. (316 U. S. at 132.) No such shotgun foray into the government files, necessarily embracing work products of the agents, was sought here. In *D'Aquino* the accused sought direct access to an agent's notes of an interview with another witness. (192 F. 2d at 375.) Petitioner sought no direct access to any document and asked only for the statement of the witness under cross-examination. The *Little* and *Arnstien* cases are discussed below.

States v. Beckman (2 Cir.), 153 F. 2d 580.) The discretion lies not in the power to compel disclosure of the document to the court but rather in determining whether the document has relevance for impeachment or otherwise. *United States v. Cohen, supra; United States v. Simonds* (2d Cir.), 148 F. 2d 177; *United States v. De Normand* (2 Cir.), 149 F. 2d 622. It is not in this area of discretion that the trial court's error lies in the case at bar. Rather it is found in refusing to examine for relevance documents shown to have direct bearing upon those transactions used by the government to prove petitioner's guilt. Upon the foundation here laid we submit the trial court had no discretion to rule as it did. For it closed the door to ascertaining the existence of "relevant and important facts bearing on the trustworthiness of crucial testimony." *Gordon v. United States*, 344 U. S. at 423.

We do not read the decided cases as the government does, and we think that the better reasoning is that under circumstances similar to those here the trial judge is called upon to require production of the prior statements. We think it is true that in the *Krulewitch* case (145 F. 2d 76) the witness did in fact concede that her prior statements contradicted her trial testimony. However, this appears from the dissenting opinion of Judge Clark, and not from the majority opinion. It would appear from Judge Learned Hand's opinion that the witness' admission in this respect was of no consequence. Indeed, as he points out (145 F. 2d 79), it was impossible for the accused to develop the contradiction other than in the most general and therefore useless terms without access to the statement itself. That Judge Hand and his court regard the *Krulewitch* case as in effect holding that a prior showing of contradiction is not necessary to obtain production

of the prior statement to the court appears from the formulation in a subsequent opinion *United States v. Cohen* (2 Cir.), 145 F. 2d 82, 92. From that case it would appear that the trial judge is called upon to require production to him and to examine prior statements of the witness taken by the government and to make them available to the defense where his inspection shows the contradiction. This, it was stated in the *Cohen* case, was the principle laid down in *Krulewitch*:

> "We have very recently considered this question in United States v. Krulewitch, 145 F. 2d 76, and we need not repeat what we there said. We held that when statements are taken by the prosecution *which appear upon inspection by the judge to contradict* the testimony of the witness when he is called at the trial, the accused should be allowed to inspect them, since he cannot otherwise impeach the witness." (145 F. 2d 92.) (Emphasis added.)

While Judge Denman in *Fisher v. United States* (9 Cir.), 231 F. 2d 99, 104, did not cite the opinions of the Second Circuit, his holding that the government records should be produced directly to the defendant was made without reference to any prior showing of inconsistency. Indeed, it is inescapable from the opinion that no such showing was made in the *Fisher* case. We have already directed the Court's attention to district court rulings where the prior showing of inconsistency was either specifically held unnecessary or its absence not even noticed. (Pet. Br. 30, 36, n. 18.)

United States v. Ebeling (2 Cir.), 146 F. 2d 254, actually supports petitioner's position. Demand for production of the document led to its being shown to the court, and inspection by the defendant was refused because the

court found no contradiction. The appellate court refused to reverse since the defendant had not requested that the statement be included in the record on appeal. (146 F. 2d, at 256, 257.)

United States v. De Normand (2 Cir.), 149 F. 2d 622, is to similar effect except that there the prior statement was incorporated in the record on appeal and the appellate court affirmed the trial judge's judgment that the contradictions were so inconsequential as not to justify inspection by the defendant.

D'Aquino v. United States (9 Cir.), 192 F. 2d 338, and *Christoffel v. United States* (C. A. D. C.), 200 F. 2d 734, do not deal with prior statements of the witness and have no bearing at all.

Two of the government's authorities appear to support its position. *Arnstein v. United States*, 296 F. 946, however, is distinguishable on its facts although not in its reasoning. The document involved in that case was in the possession of a state official, the district attorney of New York County. The bringing of a prosecution by the United States did, therefore, not waive the privileges possessed by the state government. For that reason nonproduction could be supported in that case without compelling the same result here. *Little v. United States* (8 Cir.), 93 F. 2d 401, is directly contrary to petitioner's position here. It is to be observed, however, that this is an early case which, together with others of similar vein, including *Arnstein*, were before Judge Hand's court in *United States v. Krulewitch* and were therefore considered and rejected by that court. (See 145 F. 2d at 81.) Since *United States v. Lightfoot* (7 Cir.), 228 F. 2d 861, is now before this Court on this issue among others, it is of little weight here. From the opinion it would appear that the

holding is distinguishable because of the timing of the defendant's request for production of the documents to the court.

In *Scanlon v. United States* (1 Cir.), 223 F. 2d 382, the court enunciated the principle urged by the government here, that the accused must develop the existence of contradiction between trial testimony and prior statement before the document will be ordered produced. But that was with reference to a motion for direct access by the accused. Here we agree that before the accused inspects the document the contradiction must appear. The issue is whether that contradiction must appear before the trial judge is required to examine it. The case does not aid the government. The *Scanlon* case rather graphically illustrates the extent to which the government's position here would frustrate an important phase of the search for truth. There, as the Court of Appeals has it, the witness "stated that *as far as he could recollect*" his testimony on the witness stand was not different from that contained in the report. There is a quality of bootstrap in reasoning that the court should not examine the most reliable gauge of a witness' recollection and accuracy because his untested recollection of his prior statement fails to show a contradiction between it and his testimony. This recollection may indeed be an honest one, but not reliable because of the passage of time. That in cases of the career informers, such as Matusow, it may well be a dishonest one is too apparent to need argumentation. Truth is too precious and its ascertainment too needful in the administration of justice to permit the door to its sanctuary to be so easily barred. Especially is this true where, as here, the government knows what the statement contains. If there is no contradiction the government cannot

be injured while the appearance of justice is enhanced. If there is a contradiction justice demands that it be made known, and the duty of the prosecutor in this regard compels him to take the lead to that end. As was said in *Fisher v. United States, supra,* p. 104, "one would expect the Government to have been glad to produce [the statements]". It has nothing to gain from concealing them unless it be the unjust conviction of petitioner.

(d) Petitioner's Request, at the Hearing, for Matusow's Reports Should Have Been Granted on This Record.

Apparently conceding that under *Ellicott v. Pearl,* 35 U. S. (10 Pet.) 412, production of the statements could be compelled "to corroborate a recanting witness' testimony which is in conflict with the witness' trial testimony" (G. Br. 36), the government urges that in addition to Matusow's trial testimony being unimportant, his recantation was only tangential to the trial testimony. (G. Br. 37.) This, we submit, is plain distortion of the record, for not only did Matusow at the trial testify to facts upon which guilt was predicated, but at the hearing he recanted specifically those facts.

Anent the government's assertion that at the trial Matusow did not "state that petitioner was a member of the Communist Party, or that petitioner had said that he was a member of the Communist Party" (G. Br. 37), we have already shown that the Matusow testimony could have had only the purpose and effect of showing petitioner's membership in the Communist Party at a time after the affidavit was signed. (*Ante,* subd. (b).) When in recanting Matusow said that he never had any discussion with petitioner concerning "Communist Party membership or Communist Party activities" (see Pet. Br. 18, 19) and

then proceeded to denounce as false every reference in every incident of his trial testimony to membership in or activities in or on behalf of the Communist Party (see Pet. Br., App. I), he directly and unequivocally contradicted his trial testimony. And that contradiction went to the central issues of the case: membership in and affiliation with the Communist Party.

The kernel significance of this lies in relation to the motion for production of Matusow's contemporaneous informer reports at the hearing. There Matusow said none of these reports would show that he had "any conversations that established that Jencks was a Communist," that he "never at any time identified Mr. Jencks as a member of the Communist Party in the reports" and that he had no way of knowing who were or were not Communists, including Mr. Jencks." (See Pet. Br. 21.) The suggestion that this testimony "failed to develop any inconsistency whatever between Matusow's testimony at the hearing and at the trial, or any revelant evidence going to the issue of [petitioner's] innocence" (G. Br. 37) thus borders on fantasy. At the hearing Matusow recanted the trial testimony that had been essential to Jencks' conviction, to wit, admissions of membership as of a time after the affidavit was signed. He reinforced this recantation by saying that his contemporaneous reports contained no references to the incidents as he described them at the trial. The government overlooks the principles that under the circumstances in which these reports were prepared[6] the mere failure to report these incidents would amount to an "assertion of their non-existence". 3 Wigmore, *Evidence*, p. 733, sec. 1042.

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[6]His instructions and practice were to report all incidents as "completely" as he could and to include "everything that I remembered I saw and heard". [R. 290, 291.]

The contradiction between the trial testimony and the recantation and the contradiction between the former and the contemporaneous informer reports was thus complete, precise and directed at the central issues of the case. Since it was claimed that the recantation was a fabrication corruptly induced, the F.B.I. reports were manifestly proper rehabilitation. If the reports showed no more than the foundation laid by the recantation, namely, that there were no reports of conversations with Jencks dealing with Communist Party membership or activities, the resulting inference of "assertion of their non-existence" would have been strong impeachment. It is not unreasonable to assume that if Matusow had obtained nothing from Jencks concerning the Communist Party, he would have reported his failure to get such information or not have mentioned Jencks at all, and from this the trier of the facts could well infer that, by the best evidence available, Matusow fabricated all four incidents which he related at the trial.

It is difficult to perceive how a legal discretion could properly be exercised at the hearing not to examine the statements in question. Here the only issue was Matusow's truthfulness. This the government raised. This the judge had a special responsibility to determine in order to protect his judgment on the one hand and to keep unsullied the processes of justice on the other. The prosecution concealed and the judge ignored the only item of evidence that was contemporaneous with the events narrated in the testimony and least affected by the complex and hydraulic pressures of Matusow's self-interest and shifting partisanship.

The government seeks affirmance of the trial court's rulings on the ground that the error, if any, was harmless because the evidence was sufficient to support the convic-

tion and that petitioner "has abandoned in this Court" any contention to the contrary. (G. Br. 39.) Petitioner has abandoned no substantial attack upon the judgment here. He has selected the grounds for this review so as best to present the issues to this Court. Aside from the testimony of Matusow, which requires separate treatment on account of the recantation, the requests for production of his contemporaneous reports and his role as professional informer-witness, the evidence is, as already demonstrated, all pre-affidavit. The sufficiency of pre-affidavit evidence is an inseparable part of petitioner's position here. It is raised by way of attack upon the trial court's instructions which were so vague and lacking in guidance as to permit the jury to find membership and affiliation as of April 28, 1950, from insufficient evidence ranging in date from nine months to four years prior to the affidavit. (Pet. Br., Point Two, subd. (b), pp. 55-60; Point Three, subd. (c), pp. 75-76.) Necessarily contesting the sufficiency of the evidence is petitioner's contention that the instruction on affiliation permitted the jury to find that relationship without reference to the element of a close working alliance to effecuate proscribed objectives. (Pet. Br., Point Three, subd. (b), pp. 71-75.)

This attack is predicated on the thesis of *Bollenbach v. United States*, 326 U. S. 607, that no matter how strong the appellate court may regard the evidence, the Sixth Amendment requires that the accused's guilt or innocence be determined by a jury properly instructed.

(e) The Memorandum of Matusow's Conversation With the F.B.I. Agent at Santa Fe Should Have Been Produced as Requested.

It is to be emphasized here again that this document is tantamount to Matusow's own statement. According to the testimony he spoke to the agent; the latter wrote down

what was said and showed it to Matusow, who approved of it. [R. 67-69.] The government's construction of Matusow's version of what he said to the F.B.I. agent is not a little disingenuous. It urges that the portion of the remark, "I didn't feel my testimony was honest" was merely an explanation of Matusow's "subjective motive" for telling the agent of his reluctance to testify. (G. Br. p. 35, n. 18.) On the contrary this was part of what Matusow said he had told the F.B.I. agent. The question was "What did you tell the F.B.I. agent?", and the whole answer was in response to that. The questioned sentence is followed by the words ,"Or, in substance, that is what I told him . . ." [H. 68.] Moreover in the context of the cross-examination, it is plain that the words, "I didn't feel my testimony was honest" was intended as part of what Matusow told the agent. For the line of interrogation was directed to instances where Matusow had told others he had testified falsely. [H. 66.] That petitioner's counsel in the stress of the hearing forgot this testimony [G. Br. 35; H. 755-756] proves nothing. Counsel often have lapses of memory in such circumstances, and his comments are of no value in determining Matusow's meaning. It is noteworthy that his objection was overruled [H. 756]; perhaps this indicates that the trial judge agreed with our interpretation of Matusow's testimony.

In light of these facts, therefore, petitioner's request for production of the memorandum was proper for the reasons stated in his Opening Brief (pp. 39-42). Indeed it was necessary. For here is presented not merely an opportunity to rehabilitate Matusow. The contents of this document may well indicate whether the prosecutors knew or should have known that Matusow's trial testimony might be perjurious as the latter now claims.

POINT TWO.

The Government Has Offered No Tenable Basis for Sustaining the Instruction on Membership.

In our opening brief it was urged (Pet. Br. 44-48), as we conceive this Court has held,[7] that the concept, membership in a voluntary association, has no clear meaning forming part of the general understanding. For this reason, of course, it was essential that the trial court provide guidance to the jury. One method, and this seems to be in accord with the approach generally accepted in the cases,[8] is to define the status in terms of the formal requirements prescribed by the association itself. As was pointed out in *Fisher,* this rubric would afford the accused elemental fairness because he could then measure his denial by a clear objective test, This it would seem is the minimum that can satisfy the rule laid down in the *Douds* case, that "punishment is restricted to acts done with knowledge that they contravene the statute" and "no honest, untainted interpretation . . . is punishable." 339 U. S. at 413.

The government offers no applicable authority to the contrary. *Galvan v. Press,* 347 U. S. 522 (G. Br. pp. 45-49) held simply that where the evidence contains the alien's testimonial admission that he knowingly consummated the act of joining the proof of membership (as of any time after entry—there 36 years) was sufficient. The case would doubtless support a jury instruction to the effect that if the jury believed the accused's testimony that he had joined the Party at the solicitation of a

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[7] *Lanzetta v. New Jersey,* 306 U. S. 451, 458.

[8] Including those dealing with Communist Party membership. *United States v. Reimer* (2 Cir.), 79 F. 2d 315; *Fisher v. United States* (9 Cir.), 231 F. 2d 99.

Party organizer, the jury could conclude that at some time in his life the accused had joined the organization and had done so knowingly.

Here the question is entirely different. For the government had to prove knowing falsity in denying membership on a specific date. There was no testimonial admission of joining at any time, and the evidence of conduct antedated the crucial date by long periods of time. None of that evidence pertained to an act of joining. Neither the holding in *Galvan* nor the instruction it would sustain reaches the issues here. *Galvan* offers no light on the significance of attending meetings, considered alone, although the instruction here permitted a finding on that factor by itself. Nor does it suggest whether isolated attendance or desultory or a long and persistent course of attendance is necessary. Nor does it indicate whether attendance at two widely separated meetings in 1946 or four in 1947 or two in 1948 or five in 1949 or any one or combination of these has any probative bearing on petitioner's membership or knowledge of his own membership in April 1950. The holding of this Court in *Douds*, 339 U. S. at 413-414, robs such evidence, standing alone, of any probative force to show membership as of a time some nine months after that evidence last speaks.

It is claimed that the *Galvan* case "enunciated" a "pattern" which was followed by the evidence and the instructions in the case at bar. To support this the government summarizes only the pre-affidavit evidence. (G. Br. 48.) *Galvan* enunciated no pattern. It is a holding necessarily limited to its own facts. The facts here bear no resemblance to the *Galvan* facts because the all-important testimonial admission is lacking. Nor does the disputed instruction here follow the reasoning of *Galvan*

in any particular. For aside from the fact that it permitted a finding of membership on attendance at meetings taken alone, the instruction here left the question at large upon "all other evidence . . . which bears or may bear upon the question . . ." [R. 415, 416.] *Galvan* specified the evidence sufficient for its narrow purposes (347 U. S. at 528, 529); it does not stand for the proposition that jurors unlearned in the law may create their own standards and select the evidence to suit themselves.

Nor does *Hupman v. United States,* 6 Cir., 219 F. 2d 243, assist the government. The instruction there given, while detailing more factors, has essentially the same fatal lack of guidance and a similar concluding clause leaving the whole issue at large upon the evidence as a whole. The opinion of the Court of Appeals contains no reasoning which provides assistance in analyzing the issue here or understanding that court's mental processes. The facts of the *Hupman* case are significantly different from those here. For there, two informers testified that shortly *after* signing the affidavit the accused accepted instructions from a Party leader to conceal his membership and participate in a "Taft-Hartley group." 219 F. 2d at 247.

The government fails to meet our contention that the membership instruction permitted and indeed invited the jury to base its finding on pre-affidavit evidence alone. (G. Br. 51, 52.) It first asserts that there was also post-affidavit evidence. We have already shown (Point One, *ante*) that aside from Matusow there was no post-affidavit evidence that had any probative effect on the issues of membership. But if there were such evidence, it could not cure an instruction permitting a finding upon pre-affidavit evidence alone. That the instruction here had that effect is indisputable from its face. That it in-

vited such a finding is obvious from the fact that attending meetings and holding office—the only criteria specifically mentioned—are found only in the pre-affidavit evidence.

Nor is the error cured by the instruction to base the verdict upon "all" the evidence. This was told the jury in the membership instruction [R. 416] as well as generally. [R. 417.] To tell a jury to find a difficult and complex relationship from all the evidence is to give no guidance and invite the employment of the personal notions of the jury. That "all the evidence" satisfied the court below (or may satisfy this Court) of petitioner's membership on the crucial date upon such standards as either court may apply avails nothing. For the least petitioner was entitled to was the verdict of a jury properly instructed. *Bollenbach v. United States*, 326 U. S. 607, 613-615.

It may well be that proof of compliance with the formal requirements of membership cannot include specific proof of the "act of joining." But it would then seem necessary to offer proof, essentially circumstantial in nature, that would show a course of conduct from which it could be inferred that such an act of joining had in fact been consummated. To be probative it would seem that this evidence should pertain to conduct which, by the organization's requirements, are necessary to continue membership. The instructions to the jury, then, should afford guidance as to the significance of this conduct as evidence of the "crucial" act of joining and remaining a member. In these respects a course of conduct rather than isolated acts would be determinative, and the instruction should give appropriate direction to the jury's evaluation of those factors for purposes of finding an act of joining and

remaining a member until the critical date. Here also admissions by the accused of membership have probative value, and instructions as to this would seem necessary to provide adequate yardsticks for the jury. . . .

None of these elemental necessities can be spared here because of what the government calls the "clandestine organizational structure of the Party." (G. Br. 46, 47.) If this were part of the case against petitioner, due process requires that he have a chance to meet it. Congressional findings or judicial determinations in other cases do not bind petitioner at his trial. The evidence on these matters in this record is singularly sparse and totally unconnected with petitioner. Contrary to the government's assertion, there was no evidence that the Party "to assure maximum efficiency in carrying out its aims, admonished members to conceal their membership." (G. Br. 47.) The record documentation furnished by the government is merely to the effect that "we were to rather take the background and not be too conspicuous in our activitiy and our work." [R. 110.] There is a vast difference between concealment and inconspicuousness. Ford testified only that in the period 1949-1950, "Party members . . . usually did not carry a card. [R. 132.] This is quite different from a statement that the Party "did not issue membership cards." (G. Br. 47.) He also said that he "didn't see any" membership rolls. [R. 133], which is a far cry from the claim that the organization "refrained from keeping membership rolls." [R. 47.] None of this is in any wise connected with petitioner. So far as this record is concerned, he knew nothing of it. Eckert's testimony about memberships at large and the failure to keep minutes related to 1947. He did not say that Jencks held the former or knew of either practice. [R. 335-336.]

No evidence in this record serves to justify any dispensation from the usual method of proving membership in terms of the conditions observed by the organization and the individual. Still less is there any reason why the inference of membership can be based upon a jury's unfettered selection of essentially unrelated incidents, varying only in the degree of their remoteness from the critical date, April 28, 1950.

POINT THREE.

The Government Has Offered No Tenable Basis for Sustaining the Instruction on Affiliation.

The government fails to distinguish *Bridges v. Wixon*, 326 U. S. 135. It claims that the case is different because the statute there proscribed affiliation with an organization having unlawful objectives: advocating overthrow of the government by force and violence, whereas here the statute proscribes affiliation with an organization by name: the Communist Party. It also asserts that the statute here does not punish affiliation with the Communist Party.[9] (G. Br. 51, 58.)

But the central thesis of *Bridges* is that to proscribe mere affiliation without regard to purpose abridges important First Amendment liberties. That association for the propagation of ideas is an exercise of this Amendment's guarantees is by now a commonplace. (*Wieman v. Updegraf*, 344 U. S. 183, 191; *Cantwell v. Connecticut*, 310 U. S. 296, 303; *Thomas v. Collins*, 323 U. S. 516, 539; *United Public Workers v. Mitchell*, 330 U. S. 75, 94;

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[9]Neither did the statute in *Bridges*. It simply made the alien deportable in a civil proceeding. *Carlson v. Landon*, 342 U. S. 524, 537.

Bowe v. Commonwealth, 320 Mass. 230, 252, 69 N. E. 2d. 115, 130; VI Encyc. Soc. Sci., p. 449, "Freedom of Association" (Harold J. Laski).) Citizens have a right, fully protected, to cooperate with the Communist Party for lawful objectives such as the defeat of legislation in the Congress, elimination of racial and national discrimination, election of candidates for public office. To impute to them on that account unlawful purposes or activities would present a case of imputed guilt far more enormous than those condemned in *Schneiderman v. United States*, 322 U. S. 665; *Baumgartner v. United States*, 322 U. S. 665; see also *Wieman v. Updegraf*, 344 U. S. 183, 190.

The statute here has as its objective not the elimination of aliens who belong to associations propagating proscribed doctrines but the insulation of the trade union movement from those who would use their leadership therein to call political strikes. Douds, 339 U. S. at 389, 393. Whether or not the imputation of that objective to Communist Party *members* contravenes the principles of *Schneiderman*, *Baumgartner* and *Wieman*, is not presented on this record. But to ascribe that objective to persons only on the basis of cooperation with the Communist Party for lawful objectives would mark a grave surrender of cherished democratic liberties. For not only would expression be curtailed for Communist and non-Communist alike, with parallelism of utterance offering the key to proscription, but the former would in effect be converted into pariahs, excluded by name alone from the ideological marketplace, quarantined as infectious. The definition of affiliation laid down in *Bridges* was dictated not by the language of the statute but the necessities of free speech and due process. 326 U. S. at 142-148. Affiliation as there construed delineates, not the bounds of a single

statute, but the permissible scope of the term when used to delimit a relationship which the state would forbid. The government's position here would bring the statute into direct conflict with these guarantees.

Significantly enough the same question was presented in *Fisher* and decided adversely to the government. (231 F. 2d at 108.) The government did not distinguish *Bridges* to the satisfaction of the Ninth Circuit and failed to seek review here.

POINT FOUR.

The Government Has Presented No Justification for the Failure to Instruct on Credibility of Informers.

The government is correct that the issue here pertaining to the use of informers is one of credibility.[10] (G. Br. 60.) Our complaint is that the trial court's instruction provided no guide to the probative effect of the evidence that these informers had plied their trade for money. For all that was given the jury, this fact could have weighed in their favor. It is not our contention that the trial court erred because it did not adopt petitioner's "precise language". (G. Br. 61.) The error lay in the failure to adopt any language that conveyed the idea that those who inform for pay are to be scrutinized carefully before being relied on.

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[10]The practice of using such persons in political cases may well reflect a "dirty business" more stultifying to a free society and degenerating to the administration of justice than wire tapping. See, *e.g.*, *Chafee, The Blessings of Liberty* (1956), pp. 95-97; *Editorial*, N. Y. Times, July 8, 1954; Pet. Br. 85-87. The question, of course, is not reached here, although Matusow's history as evidenced in the record on the motion for new trial here and in the *Flynn* case (130 F. Supp. 412) rather conclusively illustrates the point. See also, *Communist Party v. Subversive Activities Control Board*, 351 U. S. 115, 121, 124.

Since these informers peddled only uncorroborated oral admissions, the notoriously malleable stuff of the trade and by nature the weakest of evidence, (4 Wigmore, *op. cit.*, pp. 466-477, section 2094) the necessity of the instruction is manifest.

The government's attempts to distinguish *Fletcher v. United States* (C. A. D. C.), 158 F. 2d 321, on the ground that the informer there was the sole witness, is predicated upon a misapprehension of the evidence here. We have already shown (*ante*, Point One) that Matusow's testimony was the only post-affidavit evidence having any probative value and thus the only evidence upon which, under *Douds*, a conviction could be sustained. For this reason the crucial character of Matusow's testimony required the instruction with the same force as in Fletcher.[11]

Finally, the government argues that the jury was sufficiently instructed on the credibility of these informers by the cross-examination and closing argument of petitioner's counsel. (G. Br. 62.) It seems hardly necessary to observe that it is the function of the court, not counsel, to give the law to the jury, and that this is a duty as to all issues of law presented by the evidence. *Bird v. United States*, 180 U. S. 356, 360; *cf. Bruno v. United States*, 308 U. S. 287; *Bollenbach v. United States*, 326 U. S. 607, 613. In fact, it is reasonable to assume that the court's failure to furnish a guide to the jury in evaluating the impact of the informers' role on their credibility, coming after counsel's argument, was construed as a repudiation of that argument, and thus additionally prejudicial to petitioner.

[11] The importance of Ford's testimony to the court below was discussed in our opening brief. (Pet. Br. 42, 43.)

Conclusion.

For all reasons herein given, the judgment of conviction should be reversed.

Respectfully submitted,

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No. 23

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

CLINTON E. JENCKS, Petitioner

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

PETITIONER'S REPLY TO SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

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PETITIONER'S REPLY TO SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

This memorandum is filed, at the suggestion of the Court, in response to that filed by the government. We address ourselves first to the second question discussed by the government because our position there would be determinative of all questions presented by the rulings of the trial court with respect to production of F.B.I. reports and by the character of the witness Matusow.

1. Does the Court's action in Mesarosh v. United States, decided October 10, 1956, require this Court to order a new trial in the present case?

Petitioner submits that this Court's action in Mesarosh requires this Court to order a new trial here. The basic question is not whether the recantation in itself casts "sufficient doubt on the conviction to call for a new trial and impel this Court to so order." (Govt. Memo. p. 2.) The

basic question rather is whether the professional informer witness' history as a chronic perjurer so infects the record as to require a new trial out of a "fastidious regard for the honor of the administration of justice". Communist Party v. Subversive Activities Control Board, 351 U.S. at 124. As we apprehend this Court's action in the S.A.C.B. case and the Mesarosh case, it was taken precisely on the ground just stated. And this was done in those cases although the perjury related to matters separate from the witnesses' trial testimony.

Central to both of the cited cases is this Court's policy "to make certain that the [trier of the facts] bases its findings upon untainted evidence." Communist Party v. Subversive Activities Control Board, 351 U.S. at 125. In that case the trier of the facts was an administrative agency and it remained in existence through the period of appellate review to determine the allegation of perjury and to "reconsider its original determination" upon a record freed from that cloud. (351 U.S. at 125.) In Mesarosh, on the other hand, the trier of the fact was a jury. At the end of the trial it had been separated and ceased to exist. It therefore could not examine the allegations of professional perjury. Nor could it reach a new verdict upon a record cleared of such a taint. In these premises then the doctrine of the S.A.C.B. case required a remand for a new trial before a new jury. No other course remained open, for this Court "cannot pass upon a record containing such challenged testimony" and the "fair administration of justice requires" nothing less than a judgment based upon a record free of perjury.

The situation is no different here. Here too the trier of the facts is a jury and the same procedure is necessary.

On the facts the case at bar presents a far more compelling call upon the policy enunciated in S.A.C.B. and Mesarosh. In Mesarosh the history of chronic perjury related (as it did in the S.A.C.B. case) to matters testified to in other proceedings following the trial testimony. The witness was a career informer and professional witness. Notwithstanding his post-trial perjury the government advised this Court that it still regarded the witness' trial testimony as "entirely truthful and credible".* The witness there was not involved in any judicial determination as to his professional perjury. Here the witness is Matusow, a renegade Communist and professional informer witness. He was one of those as to whom the challenge of professional perjury stood without traverse in the S.A.C.B. case. In United States v. Flynn (D.C. N.Y.) 130 F. Supp. 412, Judge Dimock found** that Matusow "lied" at the trial in that case as well as in testifying on the motion for new trial there. (130 F. Supp. 416, 420.) Judge Dimock found him to be a man with a "propensity to lie" induced by a "yearning for a place of importance." (Idem.) Matusow's lying in the S.A.C.B. hearing and the Flynn trial antedated his trial testimony here. The Subversive Activities Control Board, even before the decision of this Court in Communist Party v. Subversive Activities Control Board, found Matusow utterly unreliable, Subversive Activities Control Board, Report, Herbert Brownell, Jr., as Attorney General of the United States v. Labor Youth League, Docket No. 102-53, decided February 15, 1955, pp. 4, 5. Following this Court's decision in the S.A.C.B. case, the Board decided to reject Matusow's testimony in its entirety. New York Times,

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*Government's Motion to Remand. We cannot cite to page and line because we do not have a duplicate of the document filed. The quoted language appears in the fourth paragraph of the motion.

**From government documents including F.B.I. reports similar to those sought at the trial and on the hearing in the trial court in the instant case.

August 12, 1956. On the trial record here the fruits of Matusow's informer-witness role were shown to have brought him substantial rewards in money and association with the powerfully placed.* Prior testimony concerning Jencks had omitted three of the four incidents related at the trial. He had repeatedly lied about his residence for personal advantage. (See Pet. Br. p. 26, n. 9.) At the hearing on the motion for new trial the government contended and the trial court found that he had been corruptly induced to make a false recantation. Finally Matusow's testimony was essential to the government's case against petitioner.

In short, here the crucial government witness has now been determined to have been a chronic perjurer for personal gain** over a long period of time starting before petitioner's trial and ending some time thereafter. Whether here the government attorneys were "credulous" as Judge Dimock found in Flynn (130 F. Supp. at 420), we need not say. At least there is still unanswered a claim that contemporaneous records (the memorandum of the Crandall interview of Matusow; see Pet. Br. 39, 40) show that Matusow advised the government that he regarded as dishonest his grand jury testimony in this case. The policy that the fair administration of justice requires a new trial will rarely find more compelling justification than the facts here.

2. What disposition of this case should be made by the Court if it concludes that the trial court erred in denying one or more of petitioner's several motions for production of F.B.I. reports for inspection by the court at the trial or at the hearing on the motion for a new trial?

*His book, "False Witness", which was designated G.Ex. 9 in the record of the hearing on the motion for new trial, sets forth a shockingly cynical description of the "grooming" of Matusow as a witness and of the methods used to gain maximum publicity and earning power. See Ch. 2, 3, 4, 5, 7, 8.

**Described by Judge Dimock as "his craving for importance and his need of money." 130 F. Supp. at 420.

Petitioner urges that this Court's holding that the trial judge's ruling refusing to examine the contemporaneous informer reports would require a reversal for new trial. The determination of the relevance of these documents was for the trial judge in the setting of the trial. Any attempt to resolve that question now upon a cold record nearly three years after the trial, when the refining processes of two appellate reviews necessarily casts all issues in a new perspective, would have a quality of the unreal. This, we submit, applies whether the examination of the belatedly produced documents be made by this Court or the trial court.

The error of the trial judge irremediably prejudiced petitioner in the conduct of his defense. This, irrespective of whether inspection of the documents now shows a contradiction. Obviously, under Gordon v. United States, 344 U.S. 414, or Griffin v. United States, 336 U.S. 704, the finding of a contradiction now would require a new trial. But the issue of the fairness of the trial reaches much further. For the reasons urged in our briefs and at argument, petitioner was entitled to the trial judge's inspection of those documents and determination of their relevance. A determination that they were not relevant would have had serious bearing on petitioner's determination to take the stand and otherwise present a defense. He was not required to meet the government's case until he had by every available means tested its trustworthiness. The court's finding that the documents were not relevant would have afforded him important information by which he could have perceived both the extent to which he could impeach the case against him and the need for his own or other testimony to rebut it. No present determination as to the relevance of those documents can undo the course adopted by petitioner at the trial and subsequent to that court's ruling.

The government's position that relevance is to be determined now gives it an unfair advantage. The factors adverted to above giving a present determination a quality of unreality also place upon petitioner additional burdens in convincing the judge of the relevance of the reports. At the time of trial all counsel and the judge participate in a living process that gives each of them a keen awareness of the significance and interrelationships of all items of evidence. That capacity for perception, that sensitivity to the complexities of the evidence, necessarily recedes with time and preoccupation with other matters. They also tend to become warped by post-trial commitments to the verdict and decisions which follow. Receptivity to considerations that would upset these results is dulled by perhaps unconscious justification of the conduct of the trial and its outcome.*

The position here urged does not conflict with the practice of the Second Circuit in providing for appellate review of the requested documents when the trial judge refuses to give the defendant access to them. (See United States v. De Normand, 2 Cir., 149 F. 2d 622; United States v. Ebeling, 2 Cir., 146 F. 2d 254.) That practice is designed to afford review of the trial judge's ruling that the documents are not relevant. Right or wrong, the ruling was made and the accused had his opportunity to defend in

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*These considerations may apply with special force here because the trial judge persistently refused to examine the reports. At the hearing on the motion for new trial he ruled so promptly that the government had no opportunity to state its position. (H. 664, 107, 147.) Those rulings were made notwithstanding that the central issue of the hearing was Matusow's credibility and the documents were the only evidence giving some promise of reliability because made before the hydraulic pressures of interest had been generated by Matusow's career as a professional witness and his subsequent, allegedly corrupt, recantation.

light of it. But here no ruling was made. The trial judge abdicated his function, and petitioner was accordingly prejudiced irrespective of the relevance of the documents.

In sum, then, the rulings of the trial judge were part of the ingredients of an omelet which can no longer be unscrambled. The procedure suggested by the government is purposed to just that futile end. Petitioner was prejudiced by those rulings, and the only method of affording him a fair trial is to order that a new one be given him.

3. In the event this Court decides that the trial judge erred in its rulings on production of F.B.I. reports, should the Court decide the remaining questions relating to the adequacy of the charge?

We agree with and urge all that the government has said in these respects. Additionally it is to be observed that these questions present important problems in the interpretation and application of an important criminal statute. The charge here was modelled after that approved in Hupman, 219 F. 2d 243. (See Government's Brief, p. 49, n. 34.) That court's reasoning affords no light on the propriety of the charge. However, the charge was followed in Gold v. United States, now before this Court on writ of certiorari to the Court of Appeals, District of Columbia, and in Travis v. United States, now pending before the Tenth Circuit as No. 5379. Decision on these questions in this case will afford needed guidance in the interpretation and application of the statute.

Moreover, the determination of these questions can be rendered quite independently of problems presented by the rulings of the trial court on the production of informer

reports or Matusow's persistent perjury. The attack upon the instructions presents questions of law concerning the interpretation and application of the statute and adequate guidance to the jury. These are unaffected by the Matusow infection of this record.

Respectfully submitted,

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Of Counsel

CERTIFICATE OF SERVICE

Service of five (5) copies of Petitioner's Reply to Supplemental Memorandum for the United States has this day been made upon Hon. J. Lee Rankin, Solicitor General of the United States, by airmail special delivery.

DATED: October 24, 1956.

JOHN T. McTERNAN

INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statutes involved	2
Statement	3
Summary of argument	12
Argument	15
1. Production of F.B.I. documents	16
2. The charge	24
3. Admissibility of petitioner's 1949 non-Communist affidavit	31
4. Exclusion of women from the jury	33
Conclusion	35
Appendix A: Statutes involved	36
Appendix B: Summary of proceedings on petitioner's motion for new trial	38

CITATIONS

Cases:

Alford v. *United States*, 282 U.S. 687	16
American Communications Association v. *Douds*, 339 U.S. 382	12, 15, 25, 28
Arnstein v. *United States*, 296 Fed. 946, certiorari denied, 264 U.S. 595	16
Ballard v. *United States*, 329 U.S. 187	34
Bracey v. *United States*, 142 F.2d 85, certiorari denied, 322 U.S. 762	31
Bridges v. *Wixon*, 326 U.S. 135	13, 27, 28
Brooks v. *United States*, 267 U.S. 432	29
Caminetti v. *United States*, 242 U.S. 470	29
Cratty v. *United States*, 163 F.2d 844	31
D'Aquino v. *United States*, 192 F.2d 338, certiorari denied, 343 U.S. 935	16
Fletcher v. *United States*, 158 F.2d 321	30
Glasser v. *United States*, 315 U.S. 60	16, 34
Goldman v. *United States*, 316 U.S. 129	12, 16, 19
Gordon v. *United States*, 344 U.S. 414	12, 17-18, 19, 21, 30
Hanratty v. *United States*, 218 F.2d 358, certiorari denied, 349 U.S. 928	35

Cases—Continued

	Page
Hirabayashi v. *United States*, 320 U.S. 81	14, 29
Hupman v. *United States*, 219 F.2d 243, certiorari denied, 349 U.S. 953	12, 15, 24, 26
Johnson v. *Sanford*, 167 F.2d 738, certiorari denied, 334 U.S. 861	35
Little v. *United States*, 93 F.2d 401, certiorari denied, 303 U.S. 644	16
Martin v. *United States*, 166 F.2d 76	35
Matusow v. *United States*, decided January 27, 1956 (C.A. 5)	11
Michelson v. *United States*, 335 U.S. 469	17
Moore v. *United States*, 150 U.S. 57	31
Osman v. *Douds*, 339 U.S. 846	12, 15
Quinones v. *United States*, 161 F.2d 79, certiorari denied, 331 US. 833	35
Shelton v. *United States*, 205 F.2d 806	19
United States v. *Cohen*, 145 F.2d 82, certiorari denied, 323 U.S. 799	19
United States v. *Dennis*, 183 F. 2d 201, affirmed, 341 U.S. 494	29
United States v. *Eisler*, 75 F. Supp. 640, affirmed, 176 F.2d 21, certiorari denied, 337 U.S. 958	31
United States v. *Flynn*, 130 F. Supp. 412	23
United States v. *Krulewitch*, 145 F.2d 76	19
United States v. *Sheridan*, 329 U.S. 379	29
United States v. *Socony-Vacuum Oil Co.*, 310 U.S. 150	16
United States v. *Tuffanelli*, 131 F. 2d 890, certiorari denied, 318 U.S. 772	31
Weiss v. *United States*, 122 F.2d 675, certiorari denied, 314 U.S. 687	31

Constitution, Statutes, and Rules:

Constitution:	
Fifth Amendment	33
Sixth Amendment	33
National Labor Relations Act, as amended by the Labor-Management Relations Act of 1947, 61 Stat. 136, Sec. 9(h), 29 U.S.C. 159(h)	3, 15, 36
18 U.S.C. 1001	3, 36

Constitution, Statutes, and Rules—Continued

	Page
28 U.S.C. 1861	33, 37
Act of of May 20, 1955, Ch. 288, General and Special Laws of Texas (1955)	35
Vernon's Annotated Civil Statutes of Texas, Art. 2133	34, 37
Federal Rules of Criminal Procedure, Rule 42	11
Miscellaneous:	
H.R. 3379, 79th Cong., 1st Sess.	34
H.R. 2051, 81st Cong., 1st Sess.	34
H. Rep. 308, 80th Cong., 1st Sess.	34
Judicial Conference of Senior Circuit Judges:	
1942, Report of the Committee on Selection of Jurors, p. 44	34
1943, Supplemental Report of the Committee on Selection of Jurors, following p. 3	34
S. 18, 80th Cong., 1st Sess.	34
S. 2699, 84th Cong., 1st Sess.	34

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 596

CLINTON E. JENCKS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals affirming the judgment of conviction (Pet. App. 69-96) [1] is reported at 226 F. 2d 540. The opinion of the court of appeals affirming the order of the district court denying petitioner's motion for a new trial (Pet. App. 49-67) is reported at 226 F. 2d 553.

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[1] "R" refers to the printed transcript of the record at the trial on the merits; "H" refers to the printed transcript of the record at the hearing on the motion for a new trial; "Pet." refers to the petition for certiorari; "Pet. App." refers to the appendix to the petition; "G. Ex." refers to Government exhibits.

JURISDICTION

The judgments of the court of appeals were entered on October 26, 1955. Petitions for rehearing were duly filed, and were denied on December 1, 1955. The petition for a writ of certiorari was filed on December 28, 1955. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the trial court erred in denying petitioner's several motions for the production of various F.B.I. reports where it had not been shown that the reports were contradictory to the testimony of a Government witness and that the contradiction was as to relevant, important, and material matters which directly bore on the issue being tried.

2. Whether the trial court erred in charging the jury on the issues of membership and affiliation, and as to the competence of certain witnesses who had been paid for their services in furnishing information to the F.B.I.

3. Whether the trial court erred in admitting into evidence a non-Communist affidavit signed and filed by petitioner in October, 1949.

4. Whether petitioner was denied any procedural right under the federal statute governing the selection of juries or under the Constitution by the exclusion of women from the jury pursuant to Texas law.

STATUTES INVOLVED

Pertinent provisions of 18 U.S.C. 1001, 28 U.S.C. 1861, 29 U.S.C. 159(h), and Vernon's Texas Civil

Statutes, Article 2133, are set forth in Appendix A, pages 36-37, *infra*.

STATEMENT

Petitioner was convicted on two counts of having violated the false-statement statute, 18 U.S.C. 1001. Each count charged that petitioner made false statements to the National Labor Relations Board in an Affidavit of Non-Communist Union Officer (National Labor Relations Board Form 1081) which he executed on April 28, 1950, and filed with the Board on May 1, 1950. Count One charged that petitioner falsely stated in the affidavit that he was not then a member of the Communist Party (R. 2), and Count Two charged that he falsely stated that he was not then affiliated with the Communist Party (R. 2). The affidavit (G. Ex. 1, R. 978) was executed and filed by petitioner, pursuant to the requirements of 29 U.S.C. 159(h), on behalf of Local 890, International Union of Mine, Mill, and Smelter Workers, hereinafter referred to as the Mine-Mill Union.

Subsequent to April 28, 1950, petitioner signed and filed with the National Labor Relations Board a complaint on behalf of his union, against one of the employers having a contract with his union (R. 1000), which complaint was duly processed by the Board (R. 97-99). The complaint was executed by petitioner and could not have been processed, had he not filed his non-Communist affidavit of April 28, 1950 (R. 98-100).

Petitioner was editor of his union newspaper (R.

965). In October, 1949, petitioner published in the paper a statement, over the names of himself, as president, and the other local union officers, headed, "What the Next C.I.O. Convention Means to Our Union." The statement reported that President Murray had threatened to expel petitioners' union from the C.I.O., and that the union had suffered greatly from raids by other unions. The statement further said (R. 968):

> Now that our Union has signed the phony affidavits we can defend ourselves on a ballot in case of raids. We do not fear attack from that quarter any longer.

On October 15, 1949, petitioner had executed a non-Communist affidavit as required by the National Labor Relations Act, as amended (G. Ex. 7, R. 989). Prior to October, 1949, the policy of petitioner's union had been not to file the non-Communist affidavits required by the Act (R. 510, 572).

Petitioner's connection with the Communist Party was developed through the testimony of eight witnesses, six of whom had formerly been members of the party. Their testimony may be summarized as follows:

Edward Currie, a former member of the Communist Party (R. 195-198), testified that in April, 1946, petitioner attended a Communist Party meeting held at the home of Arthur Bary, Chairman of the Communist Party of Colorado (R. 209-210). At this meeting petitioner urged Communist

Party members to participate more extensively in the activities of veterans' organizations (R. 209-217).

George Knott, a former member of the Communist Party (R. 410), identified petitioner as a Communist Party member (R. 413) in 1946, when petitioner was hired by the Mine-Mill Union as a business agent for their local unions in the Silver City-Bayard, New Mexico, area (R. 410-412). Petitioner also discussed with Knott, Orville Larson, elected Board member of the union, and Morris Graham, the Communist Party Organizer for the Arizona and New Mexico area, plans for the organization of a strong Communist Party group in each of the local unions in the Silver City area (R. 416-418.[2] Petitioner was instructed that party dues would be payable at the Phoenix office (R. 418).

James E. Peterson, a former member of the State Central Committee of the Communist Party of Utah (R. 490-491), testified that in late 1947 or early 1948 he attended a closed Communist meeting with the petitioner at the Hotel Utah in Salt Lake City in connection with a mining, smelting, and refining conference of the Mine-Mill Union (R. 739-740).

Peterson also met petitioner at the Rocky Mountain Convention of the Communist Party held in Denver, Colorado, in the winter of 1947-1948 (R. 500-501). At this meeting petitioner was appointed

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[2] Clay M. Brooks testified that in the spring of 1947, when he was a neighbor of petitioner (R. 385, 387), petitioner had stated that he was a Communist and proud of it (R. 388).

a member of a committee to promote the interests of the Mexican-Americans in order to bring them into the Communist Party and the labor movement (R. 505-507).

Peterson further testified that sometime during the month of May or June, 1948, petitioner attended another meeting of Communist Party members in Denver, Colorado (R. 507-508). This meeting was called to discuss strategy relative to the secession of opposition elements from the union (R. 509). The Labor Management Relations Act was also discussed and the members were instructed that it was the policy of the Communist Party at that time not to sign the non-Communist affidavits (R. 510).

Kenneth Eckert testified that he was a member of the Communist Party from 1931 to 1948 (R. 899, 902, 903). From 1946 to 1948 Eckert was a member of the Communist Party Steering Committee in the Mine-Mill Union (R. 903). Eckert first met petitioner at a meeting of the Steering Committee held in Chicago in August, 1947 (R. 905-906).[3] At this meeting petitioner urged that Chesley Smotherman be elected vice-president of the Union inasmuch as he could be depended upon to carry out the instructions of the Communist Party (R. 909-910). Eckert again met petitioner later that month at Communist Party meetings in St. Paul (R. 911-

[3] Gilbert Green, State Secretary of the Communist Party of Illinois, and Fred Finn, Trade Union Secretary of the Communist Party of Illinois, were also present at this meeting (R. 907).

912) where petitioner again urged that Smotherman be elected as vice president (R. 913-914).[4]

J. W. Ford was a member of the Communist Party in New Mexico from 1948 until September 1950 (R. 250-275). He testified that he saw petitioner at Albuquerque, New Mexico, in August 1948 at the home of Joseph DiSanti (R. 257), then chairman of the Communist Party in Albuquerque (R. 257). At this meeting petitioner outlined to the group his plans as a candidate for Congress on the Progressive Party ticket (R. 259).

Ford next met petitioner in February, 1949, at a meeting in Santa Fe, New Mexico (R. 259). At this meeting petitioner and his wife were among the delegates chosen to attend a meeting of the Mexican-American Association to be held in Phoenix, Arizona (R. 260). All delegates chosen were Communist Party members (R. 260). In connection with the Mexican-American Association, petitioner also attended a Communist Party meeting at a ranch near Santa Fe, New Mexico (R. 269-271). This meeting was called by DiSanti to prepare for a meeting of the Association to be held in Albuquerque, New Mexico (R. 269). DiSanti instructed those in attendance to give their support to the

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[4] Eckert testified that the Communist Party had different types of membership, including "membership at large" which was reserved for Communist Party members who occupied strategic positions in labor unions and other organizations where public knowledge of their Communist Party membership would jeopardize their positions in the organization (R. 914-915). Eckert also pointed out that the Communist Party did not keep minutes of its meetings (R. 916).

forthcoming meeting, but not to be conspicuous (R. 270). Subsequently, in mid-August, 1949, petitioner attended the Albuquerque meeting, during the course of which a resolution calling for the Association publicly to disavow Communism was defeated (R. 271-272). Petitioner's wife led the opposition to the resolution (R. 272-274).

Ford testified that in early 1949 the Communist Party in New Mexico was divided into two main groups: the Northern section headed by Joseph DiSanti and the Southern section headed by petitioner (R. 263). At a Communist Party meeting held in Hot Springs, New Mexico, in April 1949, petitioner was assigned to carry out the Communist Party's interest in labor (R. 265).[5] In accepting this task, petitioner pledged strong support to the state organization of the Communist Party and stated that he would concentrate mainly on recruiting Communist Party members from the labor forces in his area and that he would particularly see that greater financial support be given the Communist Party (R. 266).

In May, 1949, Ford again met petitioner at a Communist Party meeting held in Joseph DiSanti's home in Albuquerque, New Mexico (R. 267). At this meeting, petitioner stated that he was having success in recruiting Communist Party members among the labor forces. He also advised that he would report regularly to the Chairman of the State Board of the Communist Party on monies collected

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[5] At this meeting DiSanti was selected as organizer of the Communist Party in the State of New Mexico (R. 265).

and that his union newspaper would be open to support issues of concern to the Communist Party. (R. 268).[6]

In addition to being a member of the State Board of the Communist Party (R. 265-266, 268), Ford was also one of the security officers for the Communist Party in the State of New Mexico (R. 276). He testified that no disciplinary action was ever taken by the Communist Party against petitioner in his presence, during the period from 1949 through September, 1950 (R. 277-282), and also that so far as he knew as of September, 1950, petitioner had not been replaced as a member of the State Board of the Communist Party of New Mexico (R. 300).[7]

Harvey Matusow, a member of the Communist Party from 1947 until 1951 (R. 585, 599), testified with respect to several conversations he had had with petitioner at a ranch near Taos, New Mexico, in July and August, 1950 (R. 589-598). They discussed such matters as the Stockholm Peace appeal (R. 590-591), the inauguration of a "do-day" by the New York City Communists (R. 591), and petitioner's activities among the Mexican Communists who, petitioner said, were attempting to slow down

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[6] Petitioner concluded by stating that he intended to shift some of the responsibility in his area to Arthur Flores (R. 268-269). Arthur Flores was the Notary Public who notarized the Affidavits of Non-Communist Union Officer executed by Jencks (R. 149 *et seq.*).

[7] Ford testified that during 1949 and 1950, he, like most other Party members, did not carry a Communist Party card (R. 299-300).

production of basic metals, essential to the Korean war effort (R. 591).

Jesus Terrazas, a former member and shop steward in petitioner's union (R. 929), testified that issues of the "National Guardian" and "Daily People's World" were kept in the union hall of Local 890 (R. 930), that on many occasions in 1950, 1951, and 1952 petitioner, who was president of Local 890 (R. 929), encouraged the union members to read the "Daily People's World." Petitioner urged that it was the only newspaper that brought the truth to the people, as the other newspapers were controlled by capitalists (R. 930-932). Several witnesses identified the "Daily People's World" as the Communist Party newspaper on the West Coast (R. 418, 596, 924). Petitioner told Terrazas in 1950 that he had signed the non-Communist affidavit (R. 573). Terrazas was later expelled from the Mine-Mill union because he fought against Communism (R. 962-963).

Additional facts relevant to the procedural rulings and the portions of the trial court's charge contested by petitioner are, in the interest of brevity and clarity, set forth in course of the Argument, *infra*.

Petitioner adduced no evidence in rebuttal, other than documents showing his war record and documents establishing his place of residence in New Mexico during the period June to December, 1947 (R. 1027-1048).

The jury returned a verdict of guilty on both

counts on January 21, 1954 (R. 1126), and petitioner appealed from the conviction.

On January 28, 1955, while the appeal was pending, a motion for a new trial on grounds of newly discovered evidence was filed in the District Court for the Western District of Texas. At the hearing on the motion, Harvey Matusow testified for petitioner and recanted certain of the testimony he had given at the trial. The Government produced ten witnesses and eighteen exhibits in rebuttal.[8] After due consideration of all the evidence, the court denied the motion on March 12, 1955 (H. 825-826).[9]

On October 26, 1955, the court of appeals unanimously affirmed the conviction of petitioner on both counts of the indictment (Pet. App. 69-96), and similarly affirmed the judgment of the district court denying petitioner's motion for a new trial (Pet. App. 49-68).

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[8] A summary of the evidence adduced at the hearing on the motion is contained in Appendix B, *infra*. See also the opinion of the court below, Pet. App. 54-63. Petitioner has not challenged in this court the substantiality of the evidence supporting the judgment of the trial court denying his motion for a new trial.

[9] After the ruling on petitioner's motion, the trial court cited Matusow for contempt for obstructing justice (H. 819-820). Following a hearing held four days later, Matusow was adjudged guilty of contempt and sentenced to three years' imprisonment. On appeal, the conviction was reversed on the ground that the requirements of Rule 42, F. R. Crim. P., had not been met. *Matusow* v. *United States*, decided January 27, 1956 (C. A. 5). The same panel of the Fifth Circuit decided the *Matusow* case as had decided both of the *Jencks* appeals.

SUMMARY OF ARGUMENT

The Court has previously upheld the constitutionality of the non-Communist affidavit provision of the National Labor Relations Act, as amended, and denied certiorari in a case involving various collateral issues as to the scope and meaning of that provision. *American Communications Association* v. *Douds*, 339 U. S. 382; *Osman* v. *Douds*, 339 U. S. 846; *Hupman* v. *United States*, 219 F. 2d 243 (C.A. 6), certiorari denied, 349 U. S. 953. Petitioner's attack in this case is confined to the validity of various evidentiary rulings of the trial court and to the adequacy of the charge. Petitioner also attacks the validity of the exclusion of women from the jury pursuant to the requirements of Texas law.

1. The trial court did not abuse its discretion in refusing petitioner's several motions for the production of various F. B. I. reports. When these motions are analyzed in the context of the trial setting in which they were made and denied, it becomes apparent that petitioner had not, in any instance, developed a sufficient foundation for the motion by showing that the reports were contradictory of the testimony of a Government witness and that the contradiction was as to relevant, important, and material matters which directly bore on the main issue being tried. *Gordon* v. *United States*, 344 U. S. 414, 419. Cf *Goldman* v. *United States*, 316 U. S. 129, 132.

2. The trial court adequately instructed the jury on the issues of membership and affiliation. The fact that the instructions do not require that peti-

tioner's act of joining the Party be proved is immaterial, since the fact of membership may be proved by conduct which is consistent only with membership. Particularly is this true, as here, where the evidence established that it was the policy of the Communist Party to conceal the membership of persons holding strategic positions in labor unions.

Petitioner's contention that the jury could have based its finding of membership on pre-affidavit evidence alone is not persuasive in view of petitioner's failure, in the face of evidence tending to show continued membership, to adduce any evidence that he had resigned from the Party or otherwise terminated his membership therein. Moreover, the court in its charge made it plain that the affidavit for the filing of which petitioner was being tried was the one dated April 28, 1950.

Petitioner's contention that the charge as to affiliation was erroneous in that it did not foreclose conviction on the basis of proof of affiliation with the Party for lawful purposes mistakes the purpose of the statute. Unlike the statute involved in *Bridges* v. *Wixon*, 326 U. S. 135, it is affiliation on the part of a union officer with the Communist Party as such to which the Labor Act has reference. Under the Labor Act, union officers may not be "affiliated" with the Communist Party for any purpose. In any event, since membership and affiliation were charged in separate counts, and, following conviction on both counts, like sentences were imposed on each count, to run concurrently,

affirmance of the conviction on either count would require that the judgment of the court below be affirmed. *Hirabayashi* v. *United States*, 320 U. S. 81, 85.

There was similarly no error in the instructions to the jury with respect to the credibility of two informant witnesses. The jury was plainly instructed that the two witnesses had been paid for their information and that the jury might consider this circumstance in determining the weight to be accorded their testimony.

3. The trial court did not err in admitting into evidence a non-Communist affidavit signed and filed by petitioner in 1949, notwithstanding the fact that the document tended to show a violation of law not charged in the indictment. The 1949 affidavit, together with other evidence, showed an abandonment by petitioner's union of its former policy of non-compliance with the affidavit requirement of the Act, together with the reasons for that abandonment, and in conjunction with the 1950 affidavit tended to show a continuing scheme or plan on the part of petitioner to bring his union into compliance with the Act for the purpose of obtaining its benefits. The document was relevant and material to the issue being tried and hence admissible.

4. Petitioner was not deprived of any procedural right under the federal statute governing the selection of juries or under the Constitution by the exclusion of women from the jury pursuant to Texas law. The federal statute explicitly removes from the class of competent jurors any one who is in-

competent to serve under the law of the state in which the district court is held. At the time this case was tried, women were not competent to serve as jurors in Texas. Nor does application of the mandate of the federal statue infringe any constitutional rights of petitioner. There is no constitutional rule or policy which requires women to be placed on jury lists. In any event, so far as Texas is concerned, the issue is moot. Since the trial of this case, the laws of Texas have been amended so as to qualify women for service on juries.

ARGUMENT

In American Communications Association v. *Douds*, 339 U.S. 382, this Court upheld the constitutionality of Section 9(h) of the National Labor Relations Act, as amended by the Labor-Management Relations Act of 1947 (29 U.S.C. 159(h)). See also *Osman* v. *Douds*, 339 U.S. 846. The Court held that the non-Communist affidavit provision of that section was a valid exercise of Congressional power to protect commerce from the evils of disruptive, politically inspired strikes, and that its terms were not unconstitutionally vague. *In Hupman* v. *United States*, 219 F. 2d 243 (C.A. 6), this Court denied certiorari, 349 U.S. 953, in a case involving a conviction of making false statements in a non-Communist affidavit which presented various collateral issues as to the scope and meaning of Section 9(h). Petitioner in this case does not challenge the constitutionality of Section 9(h), but confines his attack to the validity of various eviden-

tiary rulings of the trial court and to the adequacy of the charge. Petitioner also attacks the validity of the exclusion of women from the jury pursuant to the requirements of Texas law.

1. *Production of F.B.I. documents*

Petitioner contends (Pet. 19-26) that the court below erred in affirming the trial court's denial of certain motions of petitioner to produce various documents from the files of the F.B.I.

It is, of course, well settled that a "large discretion must be allowed the trial judge" with respect to the production of documents, and that in the absence of abuse the exercise of that discretion will not be reviewed. *Goldman* v. *United States*, 316 U. S. 129, 132; *D'Aquino* v. *United States*, 192 F. 2d 338, 375 (C.A. 9), certiorari denied, 343 U.S. 935; *Little* v. *United States*, 93 F. 2d 401, 407 (C.A. 8), certiorari denied, 303 U.S. 644; *Arnstein* v. *United States*, 296 Fed. 946, 950 (C.A. D.C.), certiorari denied, 264 U.S. 595. Cf. *Glasser* v. *United States*, 315 U.S. 60; *Alford* v. *United States*, 282 U.S. 687. This is so, even where the document sought has been used at the trial to refresh a witness's recollection. *United States* v. *Socony-Vacuum Oil Co.*, 310 U.S. 150, 233, 234. Since the appropriate action on a motion to produce made in connection with the examination of a witness depends on the significance of the fact offered for proof, which in turn depends on "numerous and subtle considerations difficult to detect or appraise from a cold record * * *," the trial court's discre-

tion should be upheld absent "a clear showing of prejudicial abuse of discretion." Cf. *Michelson v. United States*, 335 U.S. 469, 480. There was no such abuse here.

Petitioner on four occasions, twice during the trial and twice in the course of the hearing on petitioner's motion for a new trial, moved for the production of certain documents. In each instance the motion was denied. When the rulings of the trial court are examined in the trial setting in which they were made, their correctness becomes apparent.

a. Petitioner opened his cross-examination of Matusow at the trial by developing the fact that Matusow had reported orally and in writing to the F.B.I. with respect to the conversations he had had with Matusow in July, 1950 (R. 656-658). Petitioner thereupon, without any attempt to develop a foundation for his request, asked that all such reports be produced from the files of the F.B.I. for inspection by the court, and that such portions as contradicted the witness's testimony be made available to petitioner (R. 658-659). After argument on the motion (R. 658-667), during which Government counsel pointed out that, so far as appeared, "this witness has not varied one particle from any of those other statements he has made and the statements he is making on the witness stand now" (R. 664), the court denied the motion.

This ruling was plainly correct. Under the circumstances, petitioner's motion contemplated a "blind fishing expedition" of the sort this Court condemned in *Gordon v. United States*, 344 U.S.

414, 419. There the Court held that production of certain signed statements by a witness should have been ordered at the trial, where (344 U.S. at 418-419):

> By proper cross-examination, defense counsel laid a foundation for his demand by showing that the documents were in existence, were in possession of the Government, were made by the Government's witness under examination, were contradictory of his present testimony, and that the contradiction was as to relevant, important and material matters which directly bore on the main issue being tried * * *.[10]

Petitioner here had made no attempt to show that the prior statements of the witness were contradictory of his present testimony.[11] *Cf. Shelton* v.

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[10] In *Gordon*, the Court further held that the trial court erred in excluding from evidence a transcript of proceedings based on the same events in another court against the witness wherein the court had deferred sentencing the witness and advised him "to tell the probation authorities the whole story even though it might involve others." 344 U.S. at 417, 421, 422. The fact that this Court might well have affirmed the conviction had the record revealed only the error discussed in the text is suggested by its statement in conclusion that: "We believe * * * that the *combination* of these *two* errors was sufficiently prejudicial to require reversal" (*id.* at 422, emphasis added).

[11] Petitioner cites (Pet. 16, 20-21) several Second Circuit cases which reveal a practice on the part of certain of the judges in that Circuit of requiring the production, in appropriate instances, of pre-trial statements of a witness for inspection by the court, which statements may thereafter, if they appear to the court to be contradictory of statements made by the witness on the stand, be made available to the

United States, 205 F. 2d 806, 814-815 (C.A. 5). Accordingly, the teaching of this Court in *Goldman* v. *United States*, 316 U.S. 129, 132, controlled the disposition of the motion. There this Court said that:

> [It is] the better rule that where a witness does not use his notes or memoranda in court, a party has no absolute right to have them produced and to inspect them.

As the court below held (Pet. App. 94), the trial court properly refused to order the production of the F.B.I. documents relating to Matusow's conversations with Jencks in July, 1950.

b. Some time later, petitioner made the same motion for the production of reports which the witness Ford, who had testified before Matusow, had made to the F.B.I. (R. 896-898). The motion plainly stood on the same ground as the motion relating to

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defendant. E.g., *United States* v. *Krulewitch*, 145 F. 2d 76, 79 (C. A. 2); *United States* v. *Cohen*, 145 F. 2d 82, 92 (C. A. 2), certiorari denied, 323 U.S. 799. It is, of course, not error to follow this practice, but the question here is whether it is an abuse of discretion for a trial court to refuse to order the production of documents for inspection by the court where it has not been shown that they contain statements which contradict statements made by a witness from the stand. The Second Circuit cases were elaborately discussed in the briefs of the parties in this Court in *Gordon* v. *United States*, 344 U.S. 414. Nothing in this Court's decision in that case indicates a disposition on the part of this Court to limit the discretion which trial courts had historically exercised in this area. As we have shown in the text, the Court there carefully limited its ruling requiring the production of documents to instances where a proper foundation had been laid.

reports of Matusow, and was denied for the same reasons (R. 898).

c. At the hearing on the motion for a new trial, Matusow under cross-examinaiton by the Government said that in the latter part of August, 1953, prior to the trial of the case, he had told an F. B. I. agent that he did not wish to testify against petitioner and further remarked that he had said he did not feel that his testimony "was honest" (H. 68). Some time later, petitioner moved for an order requiring the Government to produce the reports of the F. B. I. relating to this conversation (H. 107). The motion was denied (H. 107). However, the Government called as a witness Clarence Crandall, the Resident Agent of the F. B. I. in Santa Fe at the time that Matusow had said that he made such a statement. Crandall testified that on August 27, 1953, Matusow had visited him at his offices. Matusow stated that he was reluctant to testify further in the Jencks case because the publicity he had received seemed to work against his marital relations. He said nothing to the effect that such testimony would not be "honest." Matusow visited Crandall briefly on one other occasion and talked with him twice over the telephone. At no time did he indicate that he had ever given dishonest testimony. (H. 752-756.) On cross-examination of Crandall, petitioner asked no questions relative to Matusow's statement that he had said his testimony in the Jenck's case was not honest (see H. 756-758), and did not after this testimony renew his motion for the production of the F. B. I.

reports relating to Matusow's statement to Crandall.

Here again, as the court below held (Pet. App. 63-66), petitioner had not developed a foundation for his request so as to bring it within the rule this Court laid down in *Gordon* v. *United States*, 344 U. S. 414,[12] and petitioner's interests were fully protected when the Government produced for examination the agent to whom Matusow had spoken at the times referred to. Obviously, as the court of appeals said (Pet. App. 66): "The [trial court] was not forced to accept Matusow's statement, but was justified in accepting the contradictory statement of the agent." Indeed, it appears that Matusow's reference to a pre-trial statement that his testimony in the Jenck's case was not "honest" was regarded by petitioner as unimportant in its trial setting. It was not noticed by petitioner's counsel at the time (H. 68, see H. 107), was not mentioned when the motion for the production of the F. B. I. reports was made (H. 107), and when Crandall was asked by Government counsel: "Did [Matusow] say to you he had been a dishonest witness * * *," petitioner's counsel objected on the ground that "Matusow did not testify that he had made any such statement to the F. B. I. man in Santa Fe" (H. 755-756).

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[12] The court of appeals pointed out, as a further distinction, that "Matusow's statement was not that of a witness against [petitioner] developed upon cross-examination, but was the statement of appellant's witness seeking to bolster testimony then being given" (Pet. App. 66, n. 13).

d. Toward the end of his testimony in support of petitioner's motion for a new trial, Matusow stated that, although he was a member of the Communist Party, he was not a member in the State of New Mexico, and that he had not attended any Communist functions there, and asserted that the reports he made to Agent Burttram of the F. B. I. in August, 1950, would bear this out (H. 660-661). He also asserted that in those reports he did not state that Jencks was a Communist nor did he say that Jencks had said he was a Communist (H. 661-662). Petitioner thereupon requested production of all the F. B. I. reports and records dealing with reports Matusow had given to Agent Burttram on the ground that they would corroborate Matusow's testimony (H. 663-664). The motion was denied (H. 664).

It is important to note that the denials made by Matusow, which his counsel sought to corroborate through the production of F. B. I. reports, did not traverse any statements Matusow had made in the course of the trial which resulted in petitioner's conviction. The record shows that Matusow's testimony at the trial concerned only certain conversations he had had with Jencks in 1950 (see Statement, *supra*, pp. 9-10). He did not testify that he, Matusow, was a member of the Communist Party of the State of New Mexico, nor did he state that petitioner was a member of the Communist Party or that petitioner had said that he was a member of the Party. Petitioner's effort to corroborate statements of the witness which did not directly

impeach testimony he had made at the trial was therefore strictly beside the point.[13] Moreover, it should be noted that the trial court ruled toward the end of the hearing after it had become apparent that Matusow's recantation was, as the court later held, bare fabrication (see the opinion of the court below, Pet. App. 55-61; Appendix B, *infra*, pp. 38-46), and that in any event, as the court below observed in affirming the judgment of the trial court denying petitioner's motion for a new trial (Pet. App. 63):

> There was ample evidence before the jury at the trial to warrant a conviction without the testimony of Matusow. We hold that, upon the whole record, it is manifest that the testimony without Matusow was so convincing that it is difficult to justify the thought that any other result could have been reached if Matusow had not been present as a witness.

Under the circumstances, the court below correctly held that the trial court did not abuse its dis-

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[13] Petitioner relies heavily on the fact that in *United States v. Flynn*, 130 F. Supp. 412 (S.D.N.Y.), Judge Dimock inspected certain F.B.I. documents reporting statements made by Matusow. This was, of course, within that court's discretion in the circumstances of that particular case, and does not show that the trial judge here abused his discretion in the different circumstances of this case. The fact that Judge Dimock concluded that Matusow's trial testimony could not be credited does not help petitioner, for that result also followed, as the court below made clear (Pet. App. 61-63), from the entirely different situation presented by that case.

cretion in denying petitioner's motion to produce Agent Burttram's reports.

2. *The charge.*

Petitioner objects to the adequacy of the trial court's charge on the issue of membership (Pet. 26-30), on the issue of affiliation (Pet. 34-36), and on the issue of the credibility of two witnesses who had been paid for their services in furnishing information to the F. B. I. (Pet. 40-43). In rejecting these contentions as "wholly unconvincing" and without merit, the court below noted (Pet. App. 88, 94-95) that in each of these respects the charge followed closely the charge given by the trial court and sustained on appeal in *Hupman* v. *United States*, 219 F. 2d 243 (C. A. 6), certiorari denied, 349 U. S. 953.[14]

a. Little need be said with respect to the adequacy of the charge on membership. Membership is a familiar concept and obviously was used in its familiar sense in the Act. As appears from the Statement (*supra*, pp. 4-10), the proof established that petitioner attended closed meetings of the Communist Party, reported on the activities of Communists in veterans' organizations, assisted in plans for the organization of Communist Party groups in union locals, served on a committee to promote interests of Mexican Americans with a view to bringing them into the Communist Party,

[14] See record in *Hupman* v. *United States*, No. 764, O.T. 1954, Appendix to appellant's brief in Court of Appeals, pp. 614a-618a.

etc. The proof also established that petitioner received instructions with respect to the payment of dues to the Communist Party, was accepted by other members of the Communist Party as a member, and on occasion asserted to non-Communists that he was a member of the Communist Party. In the light of such uncontroverted proof, the trial court properly instructed the jury that (R. 1061):

> In considering whether or not the defendant was a member of the Communist Party, you may consider circumstantial evidence, as well as direct. You may consider whether or not he attended Communist Party meetings, whether or not he held an office in the Communist Party, whether or not he engaged in other conduct consistent only with membership in the Communist Party and all other evidence, either direct or circumstantial, which bears or may bear upon the question of whether or not he was a member of the Communist Party on April 28, 1950.

Petitioner objects (Pet. 26-27) that the instructions do not require that petitioner's "act of joining" the Party be proved.[15] But membership is an

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[15] In support of his contention, petitioner quotes a statement of this Court that: "In proving that one swore falsely that he is not a Communist, the act of joining the Party is crucial." *American Communications Association* v. *Douds*, 339 U.S. 382, 410-411. But as reference to the context shows, the Court was not there addressing itself to the requirements of proof of membership, but was rather contrasting the problem of proving the objective fact of membership with the problem

objective fact and plainly may be proved, as here, by conduct which is consistent only with membership. Particularly is this true where, as here (see p. 7, fn. 4, *supra*), the evidence established that it was the policy of the Communist Party to conceal the membership of certain members, like petitioner, who occupied strategic positions in labor unions and other organizations where public knowledge of their Party membership would jeopardize their positions and hence their usefulness to the Party. See *Hupman* v. *United States*, 219 F. 2d at 248.

Petitioner's further objection that the jury could have based its finding of membership on pre-affidavit evidence alone (Pet. 29-31), and that petitioner might have resigned from the Party prior to filing his non-Communist affidavit, lacks persuasiveness, as the court below observed (Pet. 87-88), in view of petitioner's failure, in the face of evidence tending to show continued membership (Ford, R. 277-282, 300; Terrazas, R. 930-932, 961-963), to adduce any evidence of resignation and in view of the ease with which such proof could have been adduced by him if he had in fact resigned. Moreover, the argument ignores the fact that the court charged (R. 1058) that, in order to convict, the jury must find that the "defendant was a member of the Communist Party at the time stated in the instrument, that is, April 28, 1950."

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of proving the subjective state of mind of one who falsely swears that he does not believe in the overthrow of the Government by force.

b. Petitioner's contention (Pet. 36) that the charge as to affiliation (R. 1063) permitted the jury to return a verdict of conviction on the basis of pre-affidavit evidence alone parallels his similar argument with respect to the charge as to membership and must be rejected for the same reasons.

Petitioner's principal attack on the charge as to affiliation (Pet. 34-36) is that it did not foreclose conviction on the basis of proof of affiliation with the Party for such of its purposes as may have been wholly lawful. He relies on the decision of this Court in *Bridges* v. *Wixon*, 326 U.S. 135. There the Court held that proof of affiliation, as used in 8 U.S.C. 137, which provides for the deportation of aliens who are members of or affiliated with any organization that advocates the overthrow by force or violence of the Government of the United States, must show adherence to the unlawful activities of the Party, and that proof of cooperation with respect to activities not themselves unlawful was insufficient to invoke the provisions of the statute.

The *Bridges* case is clearly distinguishable. The statute involved there was operative only in the event of proof of affiliation with an organization advocating forcible overthrow of the Government. The form of the statute itself suggests Congressional concern with the unlawful purposes of such an organization. The instant case, by contrast, involves a statute in which Congress has lawfully provided that the services of the National Labor Relations Board shall not be available to unions whose officers fail to file an affidavit stating that "he is

not a member of the Communist Party or affiliated with such party * * * (*infra*, p. 36). It is affiliation on the part of the union officer with the Communist Party as such to which the statute has reference. As this Court held in *American Communication Association* v. *Douds*, 339 U.S. at 393, since "Congress might reasonably find * * * that Communists, unlike members of other political parties, * * * represent a continuing danger of disruptive political strikes when they hold positions of union leadership", Congress could constitutionally condition the availability of the services of the Labor Board upon the filing of the so-called non-Communist affidavits.

It may further be noted that it is not affiliation with the Communist Party which is made unlawful by the statute; nothing in the Labor Act makes such affiliation a crime. Petitioner has not been convicted of affiliating with the Party; he has rather been convicted of falsely swearing that he was not so affiliated. In the context of this statute, unlike the situation in *Bridges*, the question of affiliation with the Communist Party is separate and distinct from the nature of the objectives of the Party. For these reasons, the charge on the issue of affiliation accurately reflected the purpose and intent of the statute as upheld by this Court in *Douds*.

In any event, it should be noted that false swearing as to membership was charged in Count One, that false swearing as to affiliation was separately charged in Count Two, and that following conviction on both counts like sentences were imposed on each count to run concurrently (R. 1129). In these

circumstances, affirmance of the conviction on either count would require that the judgment of the court below be affirmed. *United States* v. *Sheridan*, 329 U.S. 379; *Hirabayashi* v. *United States*, 320 U.S. 81; *Brooks* v. *United States*, 267 U.S. 432.

c. Finally, petitioner contends that the court's instructions failed to provide a standard by which to judge the credibility of witnesses Ford and Matusow who were informants for the Government (Pet. 40-43).

As this Court has had occasion to note, there is no policy or rule of evidence which forecloses use by the Government of otherwise relevant evidence supplied by informants. *Caminetti* v. *United States*, 242 U.S. 470, 495-496; *United States* v. *Dennis*, 183 F. 2d 201, 224-225 (C.A.2), affirmed, 341 U.S. 494. The use of informants involves solely an issue of credibility which is peculiarly within the competence of the jury which hears the witnesses and observes their demeanor. Thus the trial court, in instructing the jury on this matter, correctly charged (R. 1064):

> The witnesses, Jerry W. Ford and Harvey M. Matusow, have testified that for a period of time they received money for services and expenses in furnishing information to the Federal Bureau of Investigation, and you may consider that circumstance when you pass upon the weight and credit which you give them as witnesses, but you are the sole judges of the credibility to be given their testimony. You may take into consideration all the facts and

circumstances in determining what weight you shall give their testimony and you are the sole judges thereof.

These instructions plainly informed the jury that Ford and Matusow had been paid for their information and that the jury might consider this circumstance in determining the weight to be accorded their testimony. It is to be noted that each of these witnesses had been subjected to searching cross-examination both on matters relating to the substance of their testimony and on issues of credibility (R. 303-326, 360-384 (Ford); R. 602-658, 668-693 (Matusow)), and counsel for petitioner most emphatically had urged that their testimony was not to be relied on because of their character as informers (R. 1169-1171, 1174-1179). Under the circumstances, there can be no doubt but that the jury was sufficiently instructed.

This case does not fall within the rule of *Fletcher* v. *United States*, 158 F. 2d 321 (C.A. D.C.), relied on by petitioner (Pet. 42). In that case the court reversed a narcotics conviction where the *sole* witness produced by the prosecution was a paid addict-informant, and the trial court had refused a precautionary instruction. Cf. *Gordon* v. *United States*, 344 U.S. 414, 417. Here, by contrast, six witnesses in addition to the two to whom this objection is addressed gave mutually corroborative testimony as to activities of petitioner tending to show membership or affiliation with the Communist Party. Cf. *Cratty* v. *United States*, 163 F. 2d 844, 850 (C.A. D.C.).

3. *Admissibility of petitioner's 1949 non-Communist affidavit.*

Petitioner contends (Pet. 37-40) that the trial court erred in admitting into evidence the non-communist affidavit signed and filed by petitioner in 1949, because it tended to show the commission of an offense not charged in the indictment.

Evidence otherwise competent and relevant is not rendered inadmissible because it tends to show the commission of another offense. *Moore* v. *United States*, 150 U.S. 57, 61. Reception of such evidence is within the sound discretion of the trial court and may be admitted to prove motive, intent, absence of mistake or inadvertence, common scheme, or plan. *Weiss* v. *United States*, 122 F. 2d 675, 682-683 (C.A. 5), certiorari denied, 314 U.S. 687; *United States* v. *Tuffanelli*, 131 F. 2d 890, 893 (C.A. 7), certiorari denied, 318 U.S. 772; *Bracey* v. *United States*, 142 F. 2d 85, 87-88 (C.A. D.C.), certiorari denied, 322 U.S. 762; *United States* v. *Eisler*, 75 F. Supp. 640, 643 (D. D.C.), affirmed, 176 F. 2d 21, certiorari denied, 337 U.S. 958 (prior false statement concerning membership in Communist Party held admissible).[16]

As the court below held (Pet. App. 88-92), the facts of this case make it a typical one for the application of this doctrine. The proof showed that petitioner and his union had initially followed the

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[16] The cases cited by petitioner (Pet. 38, 39) are not in conflict with the cases cited above, but rather are examples of the application of the general rule to the particular facts of those cases.

policy of refusing to file non-Communist affidavits (R. 572). But this policy was abandoned in 1949 in order to obtain the benefits of the National Labor Relations Act (R. 968), and the facilities of the Board were thereafter utilized by petitioner in prosecuting an unfair-labor-practice charge against an employer (R. 97-99; R. 1000, G. Ex. 13). Upon filing the 1949 affidavit, petitioner published in the union newspaper a statement signed by himself as president of the union, which, after referring to the raids which his union had suffered during the period it was not in compliance, stated that (G. Ex. 24, R. 968-969):

> Now that our Union has signed the phony affidavits we can defend ourselves on a ballot in case of raids.

A handwriting expert testified that the same person who had signed the 1949 affidavit signed the 1950 affidavit. The 1949 affidavit was necessary to make the above reference to "phony affidavits" intelligible, and together the affidavit and the statement showed an abandonment by petitioner of the policy of non-compliance, and the reasons for that abandonment; it further tended to identify petitioner as the signer of the 1950 affidavit and, in conjunction with the 1950 affidavit, to show a continuing scheme or plan on the part of petitioner to bring his union into compliance with the Act for the purposes of obtaining its benefits. The document was relevant and material to the issue being tried and was admissible.

Petitioner's further contention (Pet. 38) that the

jury might have been misled by the absence of specific instructions concerning the probative use of the 1949 affidavit lacks force when it is considered that the trial court reiterated five times in the course of its charge (R. 1058, 1061, 1062, 1063, 1064) that the issue for the jury's determination was whether or not the appellant was a member of or affiliated with the Communist Party on April 28, 1950.

4. *Exclusion of women from the jury.*

Petitioner contends (Pet. 43-47) that the exclusion of women from the jury pursuant to Texas law was contrary to the requirements of the governing federal statute, and (Pet. 47) that because of such exclusion he was deprived of rights guaranteed by the Fifth and Sixth Amendments.

The statutory basis for the exclusion of women from federal juries sitting in Texas was plain at the time this case was tried. Congress has provided that jurors in federal courts shall have the same qualifications as those of the courts of the state in which the federal court is sitting. Thus, 28 U. S. C. 1861(4), *infra*, p. 37, removes from the class of competent jurors anyone who "is incompetent to serve as a grand or petit juror by the law of the State in which the district court is held." [17] Women

[17] Petitioner relies on the fact that the Judicial Conference had urged that women be qualified for federal service "irrespective of state laws" (Pet. 45-46). But, significantly, Congress did not accept this recommendation of the Judicial Conference. The bills which incorporated the recommendations of the Judicial Conference and which would have ac-

were not competent to serve as jurors in Texas. The applicable Texas statute governing the selection of jurors in Texas limited the jury list to men. Art. 2133, *Vernon's Annotated Civil Statutes of Texas, infra*, p. 37.

Nor does application of the plain mandate of the federal statute infringe any constitutional rights of petitioner. There is no constitutional rule or policy requiring women to be placed on jury lists. See *Glasser* v. *United States*, 315 U.S. 60, 65; *Ballard* v. *United States*, 329 U. S. 187, 199, 204 (dissenting opinions). The basis for the decision in *Ballard* holding that the all-male jury therein was illegally constituted was "the purposeful and systematic exclusion of women from the panel" in a state [California] which specifically made women eligible for jury service. It was this "departure from the statutory scheme" which was condemned. 329 U. S. at pp. 193, 195. Admittedly (Pet. 44), no such departure from the statutory scheme of Texas is here involved.

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complished that result (H. R. 3379, 79th Cong., 1st Sess.; S. 18, 80th Cong., 1st Sess.; cf. draft bill, Judicial Conference of Senior Circuit Judges, 1942, *Report of the Committee on Selection of Jurors*, p. 44; Judicial Conference of Senior Circuit Judges, 1943, *Supplemental Report of the Committee on Selection of Jurors*, following p. 3), were amended prior to passage. As the House Report explains: "The last paragraph [par. 4] is added to exclude jurors incompetent to serve as jurors in state Courts" (H. Rep. 308, 80th Cong., 1st Sess., p. A156). The congressional understanding is further indicated by the fact that several bills have subsequently been introduced to provide for the qualification of women to serve on federal juries notwithstanding state law to the contrary. *E.g.*, H. R. 2051, 81st Cong., 1st Sess.; S. 2699, 84th Cong., 1st Sess.

The validity of state statutes excluding women from jury service has recently been considered and upheld as not inconsistent with federal rights by the courts of appeals of three circuits. *Quinones* v. *United States*, 161 F. 2d 79, 82-83 (C. A. 1), certiorari denied, 331 U. S. 833; *Johnson* v. *Sanford*, 167 F. 2d 738 (C. A. 5), certiorari denied, 334 U. S. 861; *Hanratty* v. *United States*, 218 F. 2d 358, 359-360 (C. A. 5), certiorari denied, 349 U. S. 928; *Martin* v. *United States*, 166 F. 2d 76, 77-78 (C. A. 4). So far as we know, no courts have been of a contrary view.

Moreover, insofar as Texas is concerned, the issue is moot. The laws of Texas have been amended so as to qualify women for service on juries. Act of May 20, 1955, Ch. 288, General and Special Laws of Texas (1955).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX A

STATUTES INVOLVED

The pertinent provisions of the statutes involved are:

18 U.S.C. 1001:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully * * * makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Section 9(h) of the National Labor Relations Act, as amended by the Labor-Management Relations Act of 1947, 61 Stat. 146, 29 U.S.C. 159(h):

> No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, * * * and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that

he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35A of the Criminal Code shall be applicable in respect to such affidavits.

28 U.S.C. 1861:

Any citizen of the United States who has attained the age of 21 years and resides within the judicial district, is competent to serve as a grand or petit juror unless:

(1) He has been convicted in a state or federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty.

(2) He is unable to read, write, speak and understand the English language.

(3) He is incapable, by reason of mental or physical infirmities to render efficient jury service.

(4) He is incompetent to serve as a grand or petit juror by the law of the State in which the district court is held.

Vernon's Texas Civil Statutes, Art. 2133:

All men over 21 years of age are competent jurors, unless disqualified under some provision of this chapter. No man shall be qualified to serve as a juror who does not possess the following qualifications: * * *

APPENDIX B

SUMMARY OF PROCEEDINGS ON PETITIONER'S MOTION FOR A NEW TRIAL

On January 28, 1955, while petitioner's appeal from his conviction was pending in the court of appeals, petitioner filed a motion for a new trial, on the ground of newly discovered evidence.

Attached to the motion for a new trial and forming the basis therefor was an affidavit by Harvey Matusow, executed in New York City on January 20, 1955. The affidavit recanted certain portions of the testimony which Matusow had given at petitioner's trial in January, 1954 (H. 7-12). Among other denials he said: "There was no basis for my stating that Clinton E. Jencks was a member of the Communist Party at the time I stated so in Court" (H. 10).[18] On direct examination (H. 26-56), Matu-

[18] At no time during his testimony at petitioner's trial did Matusow state that Jencks was a member of the Communist party.

Paragraph 3 of the affidavit stated: "The matters I testified to were either false or not entirely true, at the time I so testified" (H. 7). The affidavit then indicated in four separate sub-paragraphs those portions of Matusow's testimony which he termed false. Sub-paragraph A (H. 7-8) referred to the first discussion which Matusow had with petitioner (R. 589). The only statement attributed to petitioner therein denied was the statement: "It is a good idea. We can use more active Communists out here." (H. 7-8.) Sub-paragraph B (H. 8) of the affidavit referred to the second conversation between Matusow and petitioner (R. 590-592). This sub-paragraph denied only that part of Matusow's testimony which related to petitioner's discussion of a plot of Mexican Communist organizers to cut off production for the Korean War. Sub-paragraph C (H. 9) referred to a lecture given by petitioner (R. 592). It denied that petitioner requested guests at

sow elaborated on the denials contained in his affidavit.

Evidence adduced by the Government in opposition to petitioner's motion for a new trial may be summarized as follows:

On October 8, 1952, in Salt Lake City, Utah, Matusow testified under oath before a United States Senate Subcommittee in public session (H. 136-141). Matusow, facing Jencks, who was there as a witness under subpoena and who was also under oath (H. 141-144), repeated the substance of his conversation (R. 590-592) with petitioner at the San Cristobal Valley Ranch in 1950, concerning a Communist plan to call a strike to slow copper production and hinder the Korean War (H. 144). Petitioner was questioned as to this conversation and asked whether he wished to deny Matusow's testimony. On the advice of his counsel, he invoked the privilege of the Fifth Amendment on the ground that his answer might tend to incriminate him (H. 144-145).[19]

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the ranch to read Communist literature. In sub-paragraph D (H. 11-12) Matusow denied that petitioner had stated that the Association of Mexican Americans was a key organization as far as Communist activities in New Mexico were concerned (R. 598).

[19] At the close of the session of October 8, 1952, Graham Dolan, who was employed by the International Union of Mine, Mill and Smelter Workers and who helped to edit the Union newspaper, criticized petitioner for having told Matusow anything. Petitioner's reply was: "Well, after all, I was with him at the San Cristobal Valley Ranch. . . . We used to discuss many things. . . . He happened to ask me about the strike. Why the strike? What we intended to do about the strike? I

On April 20, 1953, before a grand jury in El Paso, Texas, and again on December 4, 1953, before the Texas Industrial Commission at Austin, Texas, Matusow described this same conversation (H. 583-592).

In the fall of 1953, Matusow prepared an outline for his book "Blacklisting Was My Business" (H. 201, 206). The outline (G. Ex. 7, H. 213-219) contained no reference to false testimony. During the period from the fall of 1953 to mid-July, 1954, Matusow unsuccessfully attempted to interest various persons and publishing houses to undertake publication of the book (H. 191-248). He testified that he told a number of these people that he had given false testimony under oath (H. 54, 640-642). One of these was Elmer Davis, the columnist (H. 54). Matusow retracted this claim on cross-examination (H. 166).[20] He also approached Bishop

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just handed him a line. After all, I had to tell him something. It's nothing to worry about with that phoney. All these hearings, they are not going to prove anything by it anyway." (H. 534.)

[20] To substantiate his recantation, Matusow claimed that a letter which he had written to Senator McCarthy on August 24, 1953, was a confession to the Senator that he had given false testimony (H. 63-65). Actually, the letter reaffirmed the honesty of his relations with the Government (G. Ex. 1, H. 59-61). Matusow likewise claimed that an affidavit (G. Ex. 4, H. 168-172) he gave to the New York Times was a retraction of some of his sworn testimony (H. 53). On cross-examination he admitted that the affidavit was actually a justification and explanation of his estimates concerning that newspaper and reaffirmed his belief that his estimates had been true (H. 168-175). He also claimed that in 1953 he had advised an F.B.I. agent that his testimony in the Jencks case was not honest. (H. 68). Agent Crandall, to whom Matusow had spoken, refuted this charge under oath (H. 754-755).

G. Bromley Oxnam. (H. 185-189). Subsequently when questioned about his conversation with Bishop Oxnam by the House Un-American Activities Committee in Washington, D. C., on July 12, 1954, Matusow denied ever saying that he had lied under oath (H. 178, 188).

In the summer of 1954, Nathan Witt, associate counsel for petitioner and general counsel for the International Mine-Mill Union, drafted a motion for a new trial for petitioner, and submitted his papers to E. B. Elfers, El Paso, associate counsel, and to John McTernan, trial counsel for petitioner (H. 776). It was determined that the motion was not based on sufficient information and it was abandoned (H. 776-777, 798). On September 13 or 14, 1954, Witt and McTernan conferred in New York City regarding the motion. They agreed that Matusow would be essential to the motion and decided that rather than approach him directly they should aid him in finding someone to publish his book (H. 798).

On or about September 21, 1954, Witt discussed the problem with John Clark, president (H. 434), Orville Larson and Ausbury Howard, vice presidents (H. 435), and Maurice Travis, secretary (H. 435), of the International Mine-Mill Union, at a meeting held at the Grand Hotel in Butte, Montana (H. 437, 438, 443-445). These officers authorized Witt to expend $1,000 to assist in the publication of Matusow's book (H. 445, 456-457, 778-780, G. Ex. 18). This method was used because they were afraid the Department of Justice would try to

find something wrong in their activities in attempting to get the "truth" from Matusow (H. 799).

Shortly after Witt's return to New York, he had a conference with petitioner and Albert E. Kahn (H. 774, 779). They agreed that Kahn's firm of Cameron and Kahn, Inc., would undertake to publish Matusow's book with money furnished by the Union through Witt (H. 779-780).[21] Witt advanced $200 to $250 to Kahn to defray the expense of locating Matusow (H. 780). Matusow was not aware of any of these arrangements and Kahn was instructed by Witt not to reveal Witt's connection until the appropriate time (H. 801).[22]

On October 22, 1954, Matusow told two Mormon missionaries that he had worked against the Communist Party at a dude ranch near Taos, New Mexico (H. 760-761). On the morning of October 23, although he had had no previous contact with Kahn (H. 320), Matusow attempted to place a long distance telephone call from Taos, New Mexico, to

[21] This is the same Albert E. Kahn who was accused of being a Communist Party member by Matusow in June, 1954 (H. 274).

[22] During this time Matusow was living in Dallas, Texas, and was reduced to selling programs in the lobby of the Melba Theatre (H. 281). While in Dallas he received a message from his parents in New York that a Mr. Cameron was trying to locate him (H. 298). In mid-October he left Dallas on a hiking trip to Salt Lake City. He intended to prospect for uranium with some friends (H. 302-303, 686). At this time his total financial resources were from $40 to $70 (H. 300). On approximately October 21, 1954, he arrived in Taos, New Mexico, where he traded his bicycle for a room (H. 321). He also borrowed $10 from Doughbelly Price (H. 327).

Kahn's residence, Croton-on-the-Hudson (H. 714, 725). He subsequently contacted Kahn at his office and arranged to be furnished air transportation to New York (H. 326). On the same day Matusow invited Riley Taintor to have dinner with him. During the dinner Matusow stated that he had received an advance of $1,000 from his publishers and displayed a large roll of bills (H. 736-737). Matusow denied receiving any money while in Taos (H. 686). The following day Matusow flew from Albuquerque, New Mexico, to New York City. While waiting for his plane in Albuquerque, Matusow remarked to the ticket agent that he was going to New York to write a book, and he commented: "No, they are not interested in the truth but as long as they will pay money for it I will write anything" (H. 546-547).

Matusow met Kahn and Cameron in New York City on October 25, 1954, to discuss publication of his book (H. 378). A contract (G. Ex's. 15 & 16, H. 383-395) for the writing and publication of the book was entered into between Matusow and the firm of Cameron and Kahn the next day (H. 395, 427). It was agreed that Matusow would receive an advance payment of $1500 (H. 390).

The subject matter of the book Matusow had planned to write was dictated into a recording machine (H. 404). Kahn was present and occasionally asked questions to develop the story more fully (H. 404-405). In the course of this procedure Matusow stated to Kahn:

> I knew Jencks was a party member and I said so. I can't say here that Jencks wasn't a Party member after he signed the affidavits because I know that he was . . . [G. Ex. 28; H. 693-694].[23]

During this time Kahn was in constant communication with Witt and kept him informed of the progress of the project. (H. 781). He delivered copies of the typed recordings to Witt at his office as they were completed (H. 781-782). When the recording was completed in mid-December, 1954, Matusow was formally introduced to Witt (H. 406, 783-784). Exactly what occurred between them is not fully covered by the evidence. However, the outcome was that Matusow agreed to make an affidavit on behalf of petitioner (H. 785-788).[24]

Shortly after his interview with Kahn, a chapter of the book concerning the Jencks trial was written (H. 784-787). Witt took the draft of this chapter to Denver on January 3, 1955 (H. 787), and it was discussed at a meeting of Mine-Mill officials (H. 793). Witt advised the union officials that he expected Matusow to make an affidavit on petitioner's behalf (H. 793). Thereupon he was instructed

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[23] This does not appear in the book as it was finally published (H. 694-700), although in the original draft Matusow again referred to Jencks as a Communist Party member (G. Ex. 23A; H. 682-683).

[24] Following this interview, Matusow was advised by Witt that it would be difficult for the Government to prosecute him for perjury on the basis of contradictory statements. Witt further suggested that the Government would not want to prosecute Matusow because it would affect other cases (H. 352-355).

to contact Kahn and arrange for a bodyguard to protect Matusow (H. 793-794).

Matusow wrote a draft of his proposed affidavit of recantation on January 17, 1955 (H. 790, 121-126). Witt had previously supplied Kahn with a copy of the record of the case (H. 781-782). The final form of the affidavit was executed on January 20, 1955 (H. 788, 813). The affidavit was filed in the District Court on January 28, 1955 (H. 2,4). No investigation was undertaken by the union with reference to the reliability of Matusow's recantation (H. 479, 487).[25]

The International Office of the Mine-Mill Union undertook to purchase 7,000 copies of Matusow's book at a cost of $3,250. This figure does not cover the number of copies which the local unions might undertake to purchase (H. 508). In addition the Canadian branch of the Union assured the publisher, Cameron and Kahn, Inc., that they would purchase 5,000 copies (H. 508-509).[26]

On direct examination at the hearing, Matusow stated that he had never told anyone that he had lied in the Jencks case before he met Albert E. Kahn, his publisher (H. 272-273).

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[25] On January 29, 1955, at a Mine-Mill Union Defense Fund Conference in El Paso, Orville Larson, a vice-president of the Union, urged a drive to discredit all Government witnesses in Communist cases (H. 804-805).

[26] The Union is the bargaining agent for the major non-ferrous metal mining companies in the United States and Canada as well as for a number of companies producing uranium ore (H. 471-472). The Union has approximately 80,000 members in the United States and approximately 32,000 in Canada (H. 471).

At the hearing no evidence was adduced by petitioner in support of the motion other than the testimony of Matusow. The Government produced ten witnesses and eighteen exhibits in opposition to the motion. Upon due consideration of all the evidence, the trial court denied the motion for a new trial on March 12, 1955 (H. 825-826).

On appeal, the court of appeals affirmed (Pet. App. 49-67), holding that the evidence supported the trial court's finding that Matusow testified truthfully at the trial, and that his recantation was false (Pet. App. 61), and that in any event "upon the whole record, it is manifest that the testimony without Matusow was so convincing that it is difficult to justify the thought that any other result could have been reached if Matusow had not been present as a witness" (Pet. App. 63).

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 596

CLINTON E. JENCKS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL BRIEF FOR THE UNITED STATES IN OPPOSITION

This supplemental brief is in reply to "Petitioner's Reply to Government's Opposition" recently filed by petitioner in the above case. We do not agree with petitioner's contention that the recent decision of the Ninth Circuit in *Fisher* v. *United States*, February 15, 1956, presents any conflicts with the decision of the Fifth Circuit in this case warranting the grant of certiorari. We will comment briefly on each of the assertions of conflict made by petitioner.

1. *Production of F.B.I. documents.*

As we show in our brief in opposition (pp. 16-24), the question of the production of documents on motion of an adverse party made in the course of trial is one as to which a large discretion is to be allowed the trial judge, and his rulings in the premises will not be overturned in the absence of a clear and prejudicial abuse of discretion.

In *Fisher*, the Ninth Circuit held that the trial court had erred in refusing to require the production of certain receipts prepared by the F.B.I. and signed by an informant-witness for moneys paid to the informant for himself and his wife over the years 1942 to 1953. The informant had testified that the payments were for money he was "actually out." The defendant sought the receipts to show, if possible, that some of the payments were for services rendered. The Ninth Circuit thought it "obvious that if Mores and his wife were such extraordinarily devoted public servants [as to supply information to the F.B.I. without payment for their services] their evidence would have a powerful effect on the jury." Moreover, as that court read the record, "Without their evidence Fisher would not have been convicted." (Pet. Reply App. 8.) It was on these premises—which have no parallel in the instant case—that the Ninth Circuit found error in the refusal of the trial court to require the production of the receipts. We need not here inquire whether the premises of the Ninth Circuit found warrant in

the record before it, or whether its ruling on those premises was correct. For in any event the fact that the Ninth Circuit ruled as it did in *Fisher* does not show that the court below abused its discretion in denying the several motions to produce various documents in the different circumstances of this case. We stand on the statement of those circumstances contained in our brief in opposition (pp. 16-24) to show that the challenged rulings of the trial court lay well within its discretion and conformed to the governing principles as declared by this Court.

2. *The Charge.*

The Ninth Circuit thought that the instructions of the trial court in *Fisher* did not go far enough in the circumstances of that case in explaining to the jury the meaning of the terms "membership" and "affiliation" as those terms are used in Section 9(h) of the Labor Act. For the convenience of the Court, the relevant portion of the charge of the *Fisher* court, as it appears in the transcript of the trial, is appended hereto as Appendix A. We deal here with petitioner's contentions that the rulings of the Ninth Circuit on the charge are in conflict with the rulings of the Fifth Circuit in the instant case.

(a). *Membership.*

The *Fisher* trial court charged that the word "member" when applied to the Communist Party had no unusual or different meaning apart from

its normal or common usage, and added that Webster defines "member" as follows: "One of the persons composing a society, community, or party; an individual who belongs to an association."

The Ninth Circuit observed that "Membership is composed of a desire on the part of the person in question to belong to an organization and acceptance by the organization." It added that "certain actions are usually required such as paying dues, attending meetings and doing some of the work of the group." It held the trial court's instructions erroneous on the ground that: "The jury should have been reminded of the components of the term membership rather than be supplied with synonyms." (Pet.'s Rely App. 14, 15.)

The trial court in the *Jencks* case, it will be noted, did invite the jury's attention to certain of the components of membership, *i.e.*, attendance at meetings, holding office in the Party, and other conduct consistent only with membership (R. 1061, quoted in Govt. Br. in Opp. 25. Moreover, as the court below held (Pet. App. 81), the Government's total proof in *Jencks* that petitioner was a member of or affiliated with the Communist Party before and after the making of his non-Communist affidavit "was overwhelming." For example, it was shown that petitioner had headed the Southern section of the Communist Party in New Mexico and was a member of the State Board of the Communist Party in that state (Govt. Br. in Opp. 6-7). It is inconceivable that a person holding such important offices in the Party was not a member

of the Party. Under the circumstances, we submit that the charge in this case adequately informed the jury of the meaning of membership as used in the Act and that the decision of the court below should be distinguished from and regarded as not in conflict with that of the Ninth Circuit in *Fisher*.

We do not read the Ninth Circuit decision, as does petitioner (Pet.'s Reply 9), as requiring proof of the "formal requirements for membership as stated in [the Party's] constitution." Reference to the opinion of the Ninth Circuit (Pet.'s Reply App. 15) shows that the sentence from which the quotation is taken contains a statement of appellant's contention before that court and not a statement of the court's view. We could not lightly attribute to the Ninth Circuit so unrealistic a position. For Congress could hardly have intended that "membership" as used in the Labor Act, relating as it does to a covert conspiracy, requires proof of arbitrary, technical requirements set forth in a self-serving document prepared by that conspiracy and called its constitution. Indeed, as the Ninth Circuit itself noted (Pet.'s Reply App. 14), Congress, in the Communist Control Act of 1954, has explicitly provided that various types of circumstantial evidence shall be considered in determining membership in the Communist Party for purposes of that Act. 50 U.S.C. 844. And in the instant case the proof showed that the Party provided a special form of membership so that persons like petitioner who occupy

strategic positions in labor unions would not jeopardize their position by their membership in the Party (see Govt. Br. in Opp. 20).

(b). *Affiliation.*

The *Fisher* court charged that "affiliated," as used in the statute, when applied to the Communist Party had no unusual or different meaning apart from its normal and common usage, adding that Webster defined "affiliate" as follows: "To connect or associate one's self with; to adopt, hence usually to bring or receive into close connection; to ally."

The Ninth Circuit noted that this definition did not square with the definition of affiliation used by this Court in another context in *Bridges v. Wixon,* 326 U.S. 135. The Ninth Circuit did not itself rule as to the correct definition of affiliation for purposes of Section 9(h) of the Labor Act. Rather, it said equivocally (Pet.'s Reply App. 16):

> One who was in sympathy with the aims of the Communist Party might be an undesirable person to have as a labor leader since he might agree to call a political strike to further that Party's revolutionary ends. However, under the test of affiliation laid down in Bridges v. Wixon he could honestly answer that he was not affiliated with the Communist Party. If the test of affiliation given in that case is still applicable, and unless the Govern-

ment can distinguish the case, this instruction is erroneous.

In our brief in opposition we have met this invitation to distinguish *Bridges* v. *Wixon*. We there show (pp. 27-28) that the test of affiliation given in *Bridges* (*i.e.*, that to show affiliation adherence to the unlawful objectives of the Party must be established), derives from the requirements of the deportation statute involved in that case and is not applicable in the present context. The Labor Act lawfully provides that the services of the National Labor Relations Board shall not be available to unions whose officers are "affiliated" with the Communist Party for *any* purpose.

It should be noted, moreover, that the principal concern of the Ninth Circuit was that one who was only in sympathy with the Party might be convicted of affiliation under the charge of the trial court in the *Fisher* case. The charge in the instant case, unlike the *Fisher* charge, explicitly met this problem, for, in addition to giving the dictionary definition of the word, the court explicitly instructed the jury (R. 1063) that "Affiliation, as used in subsection (h) of Section 159 of Title 29 of the United States Code, means something less than membership but more than sympathy."

We note in closing that only a material and important conflict in decisions as to *both* "membership" and "affiliation" would support the grant

of certiorari in the instant case. Since, in view of the concurrent sentences, affirmance of the conviction on either count would require that the judgment be affirmed (see Govt. Br. in Opp. 28-29), there would otherwise be no assurance that the point as to which the decisions are deemed to be in conflict would be reached by this Court.

For the reasons stated, we adhere to our position that the writ of certiorari in *Jencks* should be denied.

Respectfully submitted.

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MARCH 1956.

APPENDIX A

(Excerpt from charge of trial court in *Fisher* v. *United States*, Tr. 853-854)

As used in the indictment and statute the words "member" and "affiliated", when applied to the Communist Party, have no unusual or different meaning apart from their normal or common usage.

Webster's New International Dictionary defines "member" and "affiliated", when applied to the Communist Party, have no unusual or different meaning apart from their normal or common usage.*

Webster's New International Dictionary defines "member" as follows:

> "One of the persons composing a society, community, or party; an individual who belongs to an association;"

"Affiliate" is defined as follows:

> "To connect or associate one's self with: to adopt, hence usually to bring or receive into close connection: to ally."

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* Apparently this paragraph of the charge was erroneously included by the reporter.

U. S. GOVERNMENT PRINTING OFFICE 1956

INDEX

	Page
Opinion	1
Jurisdiction	2
Questions presented	2
Statutes involved	2
Statement	3
Summary of argument	14
Argument	24
I. The trial court did not commit prejudicial error by refusing, in its discretion, to compel production of the F. B. I. reports sought by petitioner	24
A. No proper foundation for the compulsory production of the reports was laid by petitioner	26
1. Requests for production of reports during the trial	26
a. Request for Matusow's reports relating to conversations in July, 1950	26
b. Request for Ford's reports	32
2. Requests for production of reports during the hearing	33
a. Request for agent Crandall's report	33
b. Request for Matusow's reports to agent Burttram	36
B. In any event, the trial court's refusal to compel production of the reports was not prejudicial	39
II. The trial court properly charged the jury on the issues of membership and affiliation	44
A. Instruction on membership	44
B. Instruction on affiliation	55
III. The jury was properly charged on the issue of the credibility of informants	59
Conclusion	63
Appendix	64–71

399866—56——1

CITATIONS

Cases: Page

Alford v. *United States*, 282 U. S. 687 25
American Communications Association v. *Douds*, 339 U. S. 382 ..... 24, 50, 55, 58
Arnstein v. *United States*, 296 Fed. 946, certiorari denied, 264 U. S. 595 ..... 25, 30
Bates v. *Preble*, 151 U. S. 149 39
Beaty v. *United States*, 203 F. 2d 652, remanded to C. A., 348 U. S. 905–906 38
Boehm v. *United States*, 123 F. 2d 791, certiorari denied, 315 U. S. 800 38
Bowman Dairy v. *United States*, 341 U. S. 214 31
Bridges v. *Wixon*, 326 U. S. 135 ..... 22, 57, 59
Brooks v. *United States*, 267 U. S. 432 57
Caminetti v. *United States*, 242 U. S. 470 60
Christoffel v. *United States*, 200 F. 2d 734; reversed on other grounds, 345 U. S. 947 30
Collier v. *United States*, 190 F. 2d 473 62
Communist Party v. *Subversive Activities Control Board*, 1955 Term, No. 48 46
Colyer v. *Skeffington*, 265 Fed. 17 46
D'Aquino v. *United States*, 192 F. 2d 338, certiorari denied, 343 U. S. 935 ..... 25, 30
Dennis v. *United States*, 341 U. S. 494 46
DiCarlo v. *United States*, 6 F. 2d 364, certiorari denied, 268 U. S. 706 38
Ellicott v. *Pearl*, 10 Pet. 412 38
Erie R. v. *Kane*, 118 Fed. 223, certiorari denied, 207 U. S. 593 42
Fisher v. *United States*, 231 F. 2d 99 ..... 30, 49, 50, 54, 56, 57, 59
Fletcher v. *United States*, 158 F. 2d 321 61
Frankfeld v. *United States*, 198 F. 2d 679, certiorari denied, 344 U. S. 922 46
Galvan v. *Press*, 347 U. S. 522 ..... 20, 45, 46, 47, 48, 49, 50, 58
Glasser v. *United States*, 315 U. S. 60 ..... 25, 62
Goins v. *United States*, 99 F. 2d 147, writ of certiorari dismissed, 306 U. S. 622 38
Goldberg v. *United States*, 213 F. 2d 734 38
Goldman v. *United States*, 316 U. S. 129 ..... 15, 25
Gordon v. *United States*, 344 U. S. 414 ..... 15, 16, 17, 18, 19, 27, 28, 29, 30, 34, 37, 38, 39, 40

Cases—Continued

	Page
Gunning v. *Cooley*, 30 F. 2d 467, affirmed, 281 U. S. 90	39
Harrison v. *United States*, 7 F. 2d 259	41, 43
Harrison v. *United States*, 191 F. 2d 874	43
Hickman v. *Taylor*, 329 U. S. 495	31
Hirabayashi v. *United States*, 320 U. S. 81	57
Holt v. *United States*, 218 U. S. 245	61
Hupman v. *United States*, 219 F. 2d 243, certiorari denied, 349 U. S. 953	24, 45, 48, 49, 54
Interstate Circuit v. *United States*, 306 U. S. 208	43
Kates v. *United States*, Nos. 6, 7, 8, this term	45
Larrison v. *United States*, 24 F. 2d 82	41
Little v. *United States*, 93 F. 2d 401, certiorari denied 303 U. S. 644	25, 30
Maggio v. *Zeitz*, 333 U. S. 56	53
Martin v. *United States*, 17 F. 2d 973, certiorari denied, 275 U. S. 527	41
Matusow v. *United States*, 229 F. 2d 335	14
Michelson v. *United States*, 335 U. S. 469	25
Osman v. *Donds*, 339 U. S. 846	24
People v. *Shilitano*, 218 N. Y. 161	41
Rowoldt v. *Perfetto*, No. 34, this term	48
Scanlon v. *United States*, 223 F. 2d 382	31, 43
Schneider v. *United States*, 57 F. 2d 454	62
Shelton v. *United States*, 205 F. 2d 806	29, 34
Stockyards Loan Co. v. *Nichols*, 260 Fed. 393, certiorari denied, 245 U. S. 668	39
Sugarman v. *United States*, 249 U. S. 182	61
Tot v. *United States*, 319 U. S. 413	53, 54
United States v. *Beekman*, 155 F. 2d 580	43
United States v. *Cohen*, 145 F. 2d 82, certiorari denied, 323 U. S. 799	29
United States v. *Dennis*, 183 F. 2d 201, affirmed, 341 U. S. 494	60, 61, 62
United States v. *DeNormand*, 149 F. 2d 622, certiorari denied, 326 U. S. 756	29
United States v. *Ebeling*, 146 F. 2d 254	29
United States v. *Flynn*, 130 F. Supp. 412	31, 43
United States v. *Johnson*, 327 U. S. 106	20, 41, 42, 43
United States v. *Krulewitch*, 145 F. 2d 76, reversed on other grounds, 336 U. S. 440	26, 29, 34

Cases—Continued

	Page
United States v. *Levy*, 153 F. 2d 995	62
United States v. *Lightfoot*, 228 F. 2d 861, pending on writ of certiorari, No. 32	30
United States v. *Remington*, 191 F. 2d 246, certiorari denied, 343 U. S. 907	30
United States v. *Rosenberg*, 195 F. 2d 583, certiorari denied, 345 U. S. 965	60
United States v. *Sheridan*, 329 U. S. 379	22, 56
United States v. *Socony-Vacuum Oil Co.*, 310 U. S. 150	25, 39
United States v. *Troche*, 213 F. 2d 401	41, 42
Vicksburg & Meridian Railroad v. *O'Brien*, 119 U. S. 99	38, 39
Weiss v. *United States*, 122 F. 2d 675, certiorari denied, 314 U. S. 687	42
Wright v. *United States*, 175 F. 2d 384, certiorari denied, 338 U. S. 813	61
Yates v. *United States*, Nos. 6, 7, 8, this term	46
Statutes:	
Communist Control Act of [August 24,] 1954, § 5, c. 886, 68 Stat. 777, 50 U. S. C. (Supp. III) 844	20, 46
Federal Rules of Criminal Procedure:	
Rule 16	30
Rule 17 (c)	31
Rule 30	53, 55
Rule 42	14
Rule 52	19, 39
Immigration and Nationality Act of June 27, 1952, § 22, as amended, c. 477, 66 Stat. 163, 204, 241 (a)	45
Internal Security Act of 1950, § 4 (f), c. 1024, 64 Stat. 987, 1006, 50 U. S. C. § 783 (f)	45, 54
National Labor Relations Act, as amended by the Labor Management Relations Act of 1947, § 9 (h), 61 Stat. 146, 29 U. S. C. 159 (h)	3, 15, 20, 21, 23, 24, 47, 48, 50, 55, 56, 57
Revised Rules of the Supreme Court:	
Rule 40 (1) (d) (2)	55
8 U. S. C. 137	57
18 U. S. C. 1001	2, 4, 55
Miscellaneous:	
5 A. L. R. 2d 912	43
II Wigmore, Evidence (3d ed.) § 288	43
III Wigmore, Evidence (3d ed.) § 738	39

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 23

CLINTON E. JENCKS, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the Court of Appeals affirming the judgment of conviction (R. 500–521)[1] is reported at 226 F. 2d 540. The opinion of the Court of Appeals affirming the order of the District Court denying petitioner's motion for a new trial (H. 833–847) is reported at 226 F. 2d 553.

[1] "R." refers to the record of the trial on the merits printed for this Court; "Tr." refers to the original transcript of the record at the trial on the merits; "H." refers to the record of the hearing on the motion for a new trial printed for the court below and filed with this Court; "Br." refers to petitioner's brief; "Pet." refers to the petition for a writ of certiorari; and "Govt. Ex." refers to Government exhibits.

JURISDICTION

The judgments of the Court of Appeals were entered on October 26, 1955. Petitions for rehearing were duly filed, and were denied on December 1, 1955. The petition for a writ of certiorari was filed on December 28, 1955, and was granted on March 5, 1956, as to questions 1, 2, 3, 4, 5, and 7 presented in the petition. 350 U. S. 980. The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether, in the circumstances of the case, the trial court committed a prejudicial abuse of discretion in denying petitioner's several motions for the production of F. B. I. reports by or about witnesses who testified for the Government at the trial.

2. Whether, in this prosecution for having knowingly filed a false non-Communist affidavit pursuant to Section 9 (h) of the Labor Management Relations Act, the trial court properly charged the jury as to the nature of membership in, and affiliation with, the Communist Party.

3. Whether the trial judge properly charged the jury on the issue of the credibility of informants who testified at the trial.

STATUTES INVOLVED

The pertinent provisions of the statutes involved are:

18 U. S. C. 1001:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully * * * makes or

uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Section 9 (h) of the National Labor Relations Act, as amended by the Labor-Management Relations Act of 1947, 61 Stat. 146, 29 U. S. C. 159 (h):

No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, * * * and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 10, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of section 35A of the Criminal Code shall be applicable in respect to such affidavits.

STATEMENT

Petitioner was convicted on both counts of a two-count indictment, returned on April 20, 1953, in the United States District Court for the Western District

of Texas (R. 1–2), alleging the violation of the false statement statute, 18 U. S. C. 1001, *supra,* pp. 2–3. Each count charged that petitioner made false statements to the National Labor Relations Board in an Affidavit of Non-Communist Union Officer (National Labor Relations Board Form 1081) which he executed on April 28, 1950, and filed with the Board on May 1, 1950. Count One charged that petitioner falsely stated in the affidavit that he was not then a member of the Communist Party (R. 1), and Count Two charged that he falsely stated that he was not then affiliated with the Communist Party (R. 1–2).

The affidavit (Govt. Ex. 1, R. 383) was executed and filed by petitioner, pursuant to the requirements of 29 U. S. C. § 159 (h), as president of Local 890 of the International Union of Mine, Mill, and Smelter Workers (hereinafter referred to as Mine-Mill Union).[2] Subsequently, petitioner signed and filed with the National Labor Relations Board a complaint on behalf of his union, against one of the employers having a contract with his union (R. 406), which complaint was duly processed by the Board (R. 23–24). The complaint was executed by petitioner and could not have been processed had he not filed his non-Communist affidavit of April 28, 1950 (R. 24–25).

Petitioner's connection with the Communist Party was developed through the testimony of eight Government witnesses, six of whom had formerly been mem-

[2] The Union is the bargaining agent for the major nonferrous metal mining companies in the United States and Canada as well as for a number of companies producing uranium ore (H. 471–472). The Union has approximately 80,000 members in the United States and approximately 32,000 in Canada (H. 471).

bers of the Party. The evidence adduced by the Government may be summarized as follows:

Edward Currie, a former Party member (R. 195–198), testified that in April, 1946, petitioner attended a Communist Party meeting at the home of Arthur Bary,[2a] Chairman of the Communist Party of Colorado (R. 85–86). At this meeting, Bary delivered a report to the effect that it was essential for Communist Party members who were veterans of World War II to join veterans' organizations to further the aims of the Communist Party (R. 88). Petitioner also delivered a report in which he stated that there were too many Party members in the American Veterans Committee and that they should spread themselves into other veterans' organizations (R. 88). Only through such activity on the part of Communist Party members in the various veterans' organizations, he further stated, could the problems facing veterans nationally be brought to the fore and met (R. 89).

George Knott, a former member of the Communist Party (R. 204), identified petitioner as being a Communist Party member in 1946, when petitioner was hired by the Mine-Mill Union as a business agent for its local unions in the Silver City-Bayard, New Mexico, area (R. 205–206). In late 1946 or early 1947, petitioner discussed with Knott, Orville Larson (Board member of the Union), and Morris Graham (Communist Party Organizer for the Arizona and New Mexico area), plans for the organization of a strong Communist Party group in each of the local unions in the Silver City area (R. 210). Petitioner

[2a] An apparent error has caused Bary's name to be spelled as Barry in the record.

was instructed that Party dues would be payable at the Phoenix office (R. 210).

Clay M. Brooks testified that in the spring of 1947, when he was a neighbor of petitioner, petitioner had stated that he was a Communist and proud of it (R. 201).

James E. Peterson, a former member of the State Central Committee of the Communist Party of Utah (R. 211–212), testified that in late 1947 or early 1948 he attended a closed Communist meeting with the petitioner at the Hotel Utah in Salt Lake City in connection with a mining, smelting, and refining conference of the Mine-Mill Union (Tr. 739–740).

Peterson also met petitioner at the Rocky Mountain Convention of the Communist Party held in Denver, Colorado, in the winter of 1947–1948 (R. 219–220). At this meeting, petitioner was appointed a member of a committee to promote the interests of the Mexican-Americans in order to bring them into the Communist Party and the labor movement and to help provide a strong foundation on which to carry out the Communist Party program (R. 223–224).

Peterson further testified that sometime during the month of May or June, 1948, petitioner attended another meeting of Communist Party members in Denver, Colorado (R. 212–220). This meeting was called to discuss strategy relative to the secession of opposition elements from the union (R. 214–226). The Labor Management Relations Act was also discussed and the members were instructed that it was the policy of the Communist Party at that time not to sign the non-Communist affidavits (R. 226–227, 237–238).

Subsequently, on September 15, 1949, petitioner executed and filed with the National Labor Relations Board a non-Communist affidavit as required by the Act (Govt. Ex. 7, R. 19–20, 395). Immediately thereafter, in the October, 1949, issue of the *Union Worker*, a union newspaper of which petitioner was editor (R. 373), petitioner published an editorial statement, over the names of himself and the other local union officers, entitled "What the Next C. I. O. Convention Means to Our Union." The statement reported that President Murray had threatened to expel petitioner's union from the C. I. O. and that the union had suffered greatly from raids by other unions. The statement further said (R. 375):

> * * * Now that our Union has signed the phony affidavits we can defend ourselves on a ballot in case of raids. We do not fear attack from that quarter any longer.

Kenneth Eckert, from 1931 to 1948 a member of the Communist Party, and from 1946 to 1948 a member of the Communist Party Steering Committee in the Mine-Mill Union, testified that he first met petitioner at a meeting of the Steering Committee held in Chicago in August, 1947 (R. 327–328).[3] At this meeting, petitioner urged that Chesley Smotherman be elected vice-president of the Union inasmuch as he could be depended upon to carry out the instructions of the Communist Party. (R. 331). Eckert again met peti-

[3] Gilbert Green, State Secretary of the Communist Party of Illinois, and Fred Fine, Trade Union Secretary of the Communist Party of Illinois, were also present at this meeting (R. 329). An apparent error has caused Fine's name to be spelled as Finn in the record.

tioner later that month at Communist Party meetings in St. Paul (R. 332–335), where petitioner again urged that Smotherman be elected as vice president (R. 913–914).[4]

J. W. Ford was a member of the Communist Party in New Mexico from 1948 until September 1950 (R. 94, 114). He testified that he saw petitioner at Albuquerque, New Mexico, in August, 1948, at the home of Joseph DiSanti, then chairman of the Communist Party in Albuquerque (R. 100). Petitioner and all the other persons attending this meeting were identified as members of the Communist Party (R. 101).

Ford next met petitioner in February, 1949, at a meeting in Santa Fe, New Mexico (R. 101). At this meeting, petitioner and his wife were among the delegates chosen to attend a meeting of the Mexican-American Association to be held in Phoenix, Arizona (R. 102). All delegates chosen were identified as Communist Party members (R. 102).

Ford testified that in early 1949 the Communist Party in New Mexico was divided into two main groups: the northern section headed by Joseph DiSanti and the southern section headed by petitioner (R. 104). At a Communist Party meeting held in Hot Springs, New Mexico, in April, 1949, petitioner

[4] Eckert testified that the Communist Party had different types of membership, including "membership at large" which was reserved for Communist Party members who occupied strategic positions in labor unions and other organizations where public knowledge of their Communist Party membership would jeopardize their positions in the organization (R. 335–336). Eckert also pointed out that the Communist Party did not keep minutes of its meetings (R. 336).

was assigned to carry out the Communist Party's interest in labor (R. 106). In accepting this task, petitioner pledged strong support to the state organization of the Communist Party and stated that he would concentrate mainly on recruiting Communist Party members from the labor forces in his area and that he would particularly see that greater financial support be given the Communist Party (R. 106). Also, at this meeting, DiSanti was elected as organizer of the Communist Party in the State of New Mexico (R. 106).

In May, 1949, Ford again met petitioner at a Communist Party meeting held in DiSanti's home in Albuquerque, New Mexico (R. 108). At this meeting, petitioner stated that he was having success in recruiting Communist Party members among the labor forces. He also advised that he would report regularly to the Chairman of the State Board of the Communist Party on monies collected and that his union newspaper would be open to support issues of concern to the Communist Party (R. 108).

In August, 1949, at a ranch near Santa Fe, New Mexico, petitioner attended another meeting of Communist Party leaders (R. 109). The meeting was called by DiSanti to prepare for a forthcoming meeting of the Mexican-American Association in Albuquerque (R. 109). DiSanti instructed all present to give vigorous support to the forthcoming meeting, but not to be conspicuous (R. 110–111). Petitioner subsequently attended the Albuquerque meeting, also held in August, 1949 (R. 110–111). During the course of the meeting, a resolution calling for the Association

publicly to disavow Communist support, and to condemn any organization that advocated the violent overthrow of the United States Government, was defeated (R. 111). Petitioner's wife led the opposition to this resolution (R. 112–113).

Ford continued his membership in the Communist Party until his departure from Albuquerque in September, 1950 (R. 114). Not only was he a member of the State Board of the Communist Party, but he also was one of the security officers for the Party in the State of New Mexico (R. 115). To his knowledge, during the period from 1949 through September, 1950, no disciplinary action was ever taken by the Communist Party against petitioner (R. 119) and petitioner had not been replaced as a member of the State Board of the Communist Party (R. 133).

Harvey Matusow, a member of the Communist Party from 1947 until 1951 (R. 241, 252), testified with respect to several conversations he had had with petitioner at a ranch near Taos, New Mexico, in July and August, 1950 (R. 243–251). At no time during his testimony, however, did Matusow ever state that petitioner was a Communist.

The first conversation took place in the latter part of July (R. 243–244) in the presence of Abraham Marcus. Matusow stated that he had left New York permanently and was considering living in either New Mexico or California, in which event he would transfer his Communist Party membership. Petitioner remarked that it was a good idea and that "we can use more active Communists out here" (R. 244–245).

In a subsequent conversation with petitioner concerning Party activities, Matusow told him that he had just spoken to DiSanti, the State organizer, concerning expediting the transfer of his Party membership from New York City to New Mexico. Petitioner remarked that it was a good idea, "We can use you out here, we need more active Party members" (R. 245).

During the same conversation, petitioner stated that he was preparing a lecture to deliver at the ranch concerning the Stockholm Peace Appeal, and inquired of Matusow what he and his fellow Communists in New York were doing in that regard (R. 245). Matusow described the activities being performed in New York and also discussed a "Do-Day" program inaugurated by the Party. The purpose of this program was to utilize the interim between Communist Party meetings by encouraging Party members to put into action the matters which they had discussed during the preceding week (R. 245–246). Petitioner considered this a very good idea and planned to mention "Do-Day" in his lecture, and would attempt also to put the plan into operation among his fellow Party members in Silver City (R. 246). Petitioner also stated that while in Mexico he had visited some Communist union organizers connected with the Mexican Miners Union and that they were trying to arrange for their contracts, both in Mexico and the United States, to expire at the same time so that they would be in a position to cut off or at least slow down all mining and smelting in basic metal production in an attempt to interfere with the Korean hostilities effort (R. 246).

Several days later, petitioner delivered the proposed lecture, discussing the role of the trade unions, the drive for peace, and the Stockholm Peace Appeal (R. 246–247).[5] During the lecture, petitioner extolled the Soviet Union's plan for disarmament and for putting an end to the Korean conflict. On the other hand, he spoke deprecatingly of the United States as the aggressor in Korea. Reference was made also to "Do-Day," a day of no meetings but just action (R. 247). Petitioner then asked those present to read the *Daily People's World* and certain pamphlets relating to the Stockholm Peace Appeal (R. 249–250).[6]

During a third conversation, Matusow told petitioner that he had joined the Taos, New Mexico, chapter of the Mexican-American Association (R. 251). Petitioner responded that this was proper Communist Party work and that he himself was active in the Mexican-American Association in the Silver City area. He explained that the Association was a key organization as far as Communist activities were concerned in New Mexico, and that the Communist Party controlled the organization, using it as a political propaganda sounding board and as an instrument in cementing fraternal and working relations with the Communist Party and the Mexican Miners Union (R. 251).

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[5] Matusow stated that the lecture took place in the library of the ranch which contained many books and periodicals published by the Communist Party, including the magazine *Political Affairs* and the newspaper the *Daily People's World* (R. 247).

[6] The *Daily People's World* was identified by several witnesses as the Communist Party newspaper on the West Coast (R. 211, 249–250, 342).

Jesus Terrazas, a former member and shop steward in petitioner's union (R. 345), testified that issues of the *National Guardian* and *Daily People's World* were kept in the union hall of Local 890 (R. 347), and that on many occasions in 1950, 1951, and 1952, petitioner encouraged the union members to read the *Daily People's World*. Petitioner urged that it was the only newspaper that brought the truth to the people, as the other newspapers were controlled by capitalists (R. 347–348).

Additional facts relevant to the procedural rulings, as well as the portions of the trial court's charge contested by petitioner, are, in the interest of brevity and clarity, set forth in course of the Argument, *infra*.

Petitioner adduced no evidence in rebuttal, other than documents showing his war record or establishing his place of residence in New Mexico during the period June to December, 1947 (Tr. 1027–1048).

The jury returned a verdict of guilty on both counts and petitioner was sentenced to imprisonment for five years on each count, the terms to run concurrently (R. 466–468).

On January 28, 1955, while the appeal was pending, a motion for a new trial on grounds of newly discovered evidence was filed in the District Court. Attached to the motion was an affidavit by Harvey Matusow recanting certain statements he had made in his testimony at the trial. At the hearing on the motion, Matusow elaborated on these denials, and the Government produced ten witnesses and eighteen ex-

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hibits in rebuttal.[7] After due consideration of all the evidence, the court denied the motion on March 12, 1955 (R. 825–826).[8]

On October 26, 1955, the Court of Appeals unanimously affirmed the conviction of petitioner on both counts of the indictment (R. 522), and similarly affirmed the judgment of the District Court denying petitioner's motion for a new trial (H. 847). In connection with the latter decision, the court held, *inter alia*, (a) that the evidence supported the trial court's finding that Matusow testified truthfully at the trial and that his recantation was false (H. 842), and (b) that, in any event, "There was ample evidence before the jury at the trial to warrant a conviction without the testimony of Matusow" and "that, upon the whole record, it is manifest that the testimony without Matusow was so convincing that it is difficult to justify the thought that any other result could have been reached if Matusow had not been present as a witness" (H. 844).

SUMMARY OF ARGUMENT

This case involves a conviction of making false statements in a non-Communist affidavit filed pur-

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[7] A summary of the evidence adduced at the hearing on the motion is contained in the Appendix, *infra*, pp. 64–71.

[8] After the ruling on petitioner's motion, the trial court cited Matusow for contempt for obstructing justice (H. 819–820). Following a hearing held four days later, Matusow was adjudged guilty of contempt and sentenced to three years' imprisonment. On appeal, the conviction was reversed on the ground that the requirements of Rule 42, F. R. Crim. P., had not been met. *Matusow* v. *United States*, 229 F. 2d 335 (C. A. 5). The same panel of the Fifth Circuit decided the *Matusow* case as had decided both of the *Jencks* appeals.

suant to Section 9 (h) of the Labor Management Relations Act of 1947. Petitioner attacks the refusal of the trial court to compel the production of certain F. B. I. reports and the adequacy of the charge. Petitioner does not challenge the sufficiency of the evidence to support his conviction; nor does he challenge the sufficiency of the evidence to support the denial of his motion for a new trial.

I

Petitioner contends that the court below erred in affirming the trial court's refusal, both at the trial and at the hearing on petitioner's motion for a new trial, to order the production of F. B. I. reports by or concerning two witnesses who testified for the Government at the trial. This Court has repeatedly emphasized that a "large discretion must be allowed the trial judge" with respect to the production of documents, and in the absence of prejudicial abuse, the exercise of that discretion will not be upset. *Goldman* v. *United States*, 316 U. S. 129, 132; *Gordon* v. *United States*, 344 U. S. 414. There was no such abuse here.

A. 1. During the trial, petitioner elicited testimony that Matusow and Ford had reported to the F. B. I. with respect to their relations with petitioner. Without attempting to develop a foundation for his requests, petitioner asked that all such reports be produced for inspection by the court, and that such portions as contradicted the witness's testimony be made available to petitioner. The trial court, however, was not required to grant such a motion in the absence of a showing that the reports sought are contradictory

to the witness's present testimony (or in some other way exculpatory in nature) as to relevant and material matters. Concededly, no such showing was made here. Under the circumstances, petitioner's motion amounted to no more than a "blind fishing expedition" of the type condemned in *Gordon* v. *United States*, 344 U. S. 414, 419.

Although the demand for documents in the *Gordon* case was for direct access, whereas here the request was for submission to the court for its inspection, there is no valid distinction since the danger of a "blind fishing expedition" is still present. The procedure urged by petitioner would merely shift the function of establishing the relevancy of the documents from the defendant to the judge. To require such a procedure, as petitioner asks, not only would unduly burden the trial courts, but also would substantially infringe upon their time-honored discretion in the disposition of such evidentiary matters. The rule urged by petitioner, moreover, disregards the legitimate interest that each party—including the Government—has in safeguarding the privacy of its files, particularly where the documents in question were obtained in confidence. Production of such documents, even to a court, should not be compelled in the absence of a preliminary showing by the party making the request.

We do not suggest that federal courts are without power, in circumstances such as presented in this case, to compel the production of F. B. I. reports. This power has, indeed, been exercised in some instances. But the fact that the trial court here could,

in its discretion, have ordered the production of the reports for its own inspection, and the fact that other courts in comparable cases have done so, do not support a conclusion that the trial court was obliged to do so in this case. It must again be emphasized that the issue is not one of power, but whether the exercise of that power in the special circumstances presented here constituted an abuse of discretion. And discretion, if it is to have any meaning at all, means a discretion to make rulings which, on the basis of the printed record, might even appear to a reviewing court to be mistakes.

2. During the post-trial hearing on petitioner's motion for a new trial, there was testimony by Matusow (who had recanted portions of his trial testimony and was then petitioner's witness) that he had made certain statements to an F. B. I. agent (Crandall) concerning his reluctance to testify at petitioner's trial. Without attempting to show any contradiction between the present testimony and the report, a motion for compulsory production of the report was made and denied. The request amounted to no more than a defense attempt to corroborate Matusow's post-trial testimony and was not within the rationale of the *Gordon* case, *supra,* which dealt with an effort to impeach a prosecution witness. Moreover, the principal basis on which petitioner now claims production should have been ordered was expressly disavowed by petitioner during the hearing. In determining whether there has been an abuse of discretion in denying the motion, the trial court's action must be judged

as of that time—not on the basis of arguments suggested by subsequent study of the record.

The request on redirect examination of Matusow for production of other F. B. I. reports (made to Agent Burttram), on the ground that they would corroborate Matusow's present testimony at the hearing, was also properly denied. Even assuming that production would have been proper to corroborate a recanting witness's post-trial testimony which conflicts with his trial testimony, there was no such conflict shown as to Matusow's testimony on redirect examination. This testimony did not traverse a single statement actually made during the course of the trial. The redirect was carefully confined to statements that Matusow's reports to the F. B. I. did *not* contain certain information—information, moreover, concerning matters as to which he had *not* previously testified at the trial.

B. As the *Gordon* case illustrates, even assuming that the trial court's refusal to compel production of the requested F. B. I. reports constituted an abuse of discretion, there would remain the question whether the error was prejudicial. Just as the particular setting of the trial court's rulings must be examined in determining whether there was an abuse of discretion, so too the broader context of the rulings must be considered in determining whether the asserted error was prejudicial. In this sense, the correctness of the trial court's rulings (which issue petitioner seeks to have reviewed) cannot be extricated and treated separately from the sufficiency of the evidence to support the conviction and the denial of a

new trial (which issue petitioner has abandoned in this Court). Only if "substantial rights" have been infringed would a reversal ever be justified. Rule 52, F. R. Cr. P.

In this respect, comparison with the factual situation in *Gordon* is illuminating. In *Gordon,* the statements sought by the defendants "directly bore on the main issue being tried: the participation of the accused in the crime." 344 U. S. at 418. Here, in contrast, not even petitioner claims that any of the reports would have shown, or ever tended to show, petitioner's innocence of the crime charged. At the very most, they might have helped to impeach the credibility of certain Government testimony. And, even for this purpose, the value of the reports was wholly speculative.

In *Gordon,* moreover, it was pointed out that there "the Government's case may stand or fall on the jury's belief or disbelief of one witness"—the witness whose prior inconsistent statements were sought by the defendants. 344 U. S. at 417. Petitioner seeks to attach similar importance to Matusow's testimony. But the court below expressly held (*a*) that the evidence supported the trial court's finding that Matusow testified truthfully at the trial and that his recantation was false and (*b*) that in any event "There was ample evidence before the jury at the trial to warrant a conviction without the testimony of Matusow" and "that, upon the whole record, it is manifest that the testimony without Matusow was so convincing that it is difficult to justify the thought that any other result could have been reached if

Matusow had not been present as a witness (H. 844). Not having sought review of this holding, petitioner is in no position to complain of prejudice in connection with reports sought to impeach Matusow's testimony.

Moreover, the holding in question would appear binding in any event. See *United States* v. *Johnson*, 327 U. S. 106, holding that trial court findings on motions for new trial should not be overturned unless unsupported by *any* evidence. Particularly is this so in the light of the impressive evidence presented by the Government at the post-trial hearing as to the circumstances of Matusow's recantation.

II

A. Petitioner complains of the trial court's charge to the jury as to the nature of membership in the Communist Party.

1. Following the pattern laid down by this Court in *Galvan* v. *Press*, 347 U. S. 522, the trial court charged the jury that, in determining whether petitioner was a member on April 28, 1950, when the affidavit was executed, they could consider (1) attendance at Party meetings, (2) whether he was an officer in the Party, (3) participation in other conduct consistent *only* with Party membership, and (4) all other evidence, either direct or circumstantial, bearing upon whether he was a member on April 28, 1950. Similar criteria are laid down in the Communist Control Act of 1954. In view of the clandestine organizational structure of the Communist Party, it is inconceivable that "member" as used in Section 9 (h) of the Act was intended to mean—as petitioner

urges—only one who has complied with formalized requirements set forth in the Party constitution.

2. Although there was no evidence of the circumstances under which petitioner joined the Communist Party, there is overwhelming evidence that he was a member. Certainly, the act of joining at some time in the past may be inferred from evidence that he was a member later. To be a member at a given time, he must have joined in the past. As the trial judge's instructions made clear, the vital issue under Section 9 (h) revolves around the affiant's status as a *current member* of the Communist Party at the time he executes the affidavit.

3. Contrary to petitioner's assertions, the membership instruction did not authorize the jury to convict petitioner upon the basis of pre-affidavit evidence alone, or upon any part of that evidence. Petitioner confuses (a) the evidence the jury was told it might consider (along with other evidence) and (b) the evidence it should base its finding upon. Furthermore, other instructions expressly admonished that the verdict must be based upon *all* the evidence, and that in determining the issues in this case it must consider *all* the evidence and the testimony of *all* the witnesses.

4. Equally without merit is petitioner's argument that the membership instruction authorized the jury to apply a "presumption of continuance" of membership. No such presumption was even mentioned in the charge. In addition, the Government's evidence, which related to the post-affidavit period as well as the pre-affidavit period and which has not been challenged

by petitioner as to sufficiency, showed a definite pattern of conduct leading to a reasonable inference that petitioner was, beyond a reasonable doubt, a member of the Communist Party on April 28, 1950.

5. The jurors were properly charged that the burden was on the Government to prove beyond a reasonable doubt that "the defendant made the statement * * * *willfully, knowing it to be false.*" [Emphasis added.] In any event, petitioner's contention that the jury was not required to confine its judgment to the accused's conception of membership—not having been raised at the trial, in the court below, or in the petition for certiorari—is not properly before the Court.

B. Petitioner also complains of the trial court's charge to the jury as to the nature of affiliation with the Communist Party. However, it should be noted that, since the convictions as to Count One (false swearing as to membership) and Count Two (false swearing as to affiliation) resulted in like sentences to run concurrently, affirmance on either count would require that the judgment of the court below be affirmed. *E. g., United States* v. *Sheridan,* 329 U. S. 379.

1. The contentions that the instruction as to affiliation allowed the jury to convict on the basis of pre-affidavit evidence alone, and that the jury was not required to confine its judgment to the accused's conception of affiliation, parallel similar contentions with respect to the charge as to membership. Accordingly, the contentions must be rejected for the same reasons (see *supra,* pp. 21, 22).

2. *Bridges* v. *Wixon,* 326 U. S. 135, is clearly inapplicable to the present case. The statute there was

expressly operative only in event of proof of affiliation with an organization advocating *unlawful activities.* In the instant case, by contrast, it is affiliation on the part of the union officer with the Communist Party, as such, to which the statute has reference, regardless of the ultimate purpose of the organization, and regardless of whether the affiliated union leader agrees with the Party's revolutionary objective. Conviction was not for affiliating with the Party, but for falsely swearing that there was no affiliation.

3. Since language must necessarily be understood in context, and since the court immediately qualified the dictionary definition by stating that affiliation as used in Section 9 (h) "means something less than membership but more than sympathy" (R. 417), the instruction was sufficiently clear to enable the jury to separate the issues under the membership and affiliation counts.

III

The jurors were properly charged that, in determining the weight to be accorded the testimony of Government informants, they should consider the fact that these informants had received money for services and expenses while furnishing information to the F. B. I. There being no invariable verbal formula for such an instruction, it is only required that the instruction be accurate and give the jury what it fairly needs to reach a verdict. Thereafter, the credibility of the witnesses is peculiarly within the competence of the jury.

ARGUMENT

In *American Communications Association* v. *Douds*, 339 U. S. 382, this Court sustained the constitutionality of Section 9 (h) of the Labor-Management Relations Act of 1947, 29 U. S. C. 159 (h). See also *Osman* v. *Douds*, 339 U. S. 846. The Court held that the non-Communist affidavit provision of that section was a valid exercise of Congressional power to protect commerce from the evils of disruptive, politically inspired strikes. Cf. *Hupman* v. *United States*, 219 F. 2d 243 (C. A. 6), certiorari denied, 349 U. S. 953.

This case, like *Hupman*, involves a conviction of making false statements in a non-Communist affidavit filed pursuant to Section 9 (h). Petitioner (except in passing [9]) does not challenge the constitutionality of Section 9 (h), but confines his attack to the refusal of the trial court to compel the production of certain F. B. I. reports and to the adequacy of the charge.[10] Petitioner also does not challenge the sufficiency of the evidence to support his conviction; nor does he challenge the sufficiency of the evidence to support the denial of his motion for a new trial.

I

THE TRIAL COURT DID NOT COMMIT PREJUDICIAL ERROR BY REFUSING, IN ITS DISCRETION, TO COMPEL PRODUCTION OF THE F. B. I. REPORTS SOUGHT BY PETITIONER

Petitioner contends (Br. 25–43) that the court below erred in affirming the trial court's denial of cer-

[9] See note 42, *infra*.

[10] In his petition for certiorari, petitioner also attacked the admissibility into evidence of a prior affidavit and the validity of the exclusion of women from the jury. These questions, however, were deleted from the grant of certiorari. 350 U. S. 980.

tain motions of petitioner to produce various documents from the files of the Federal Bureau of Investigation (F. B. I.).

It is, of course, well settled that a "large discretion must be allowed the trial judge" with respect to the production of documents, and that in the absence of abuse the exercise of that discretion will not be upset. *Goldman* v. *United States,* 316 U. S. 129, 132; *D'Aquino* v. *United States,* 192 F. 2d 338, 375 (C. A. 9), certiorari denied, 343 U. S. 935; *Little* v. *United States,* 93 F. 2d 401, 407 (C. A. 8), certiorari denied, 303 U. S. 644; *Arnstein* v. *United States,* 296 Fed. 946, 950 (C. A. D. C.), certiorari denied, 264 U. S. 595. Cf. *Glasser* v. *United States,* 315 U. S. 60; *Alford* v. *United States,* 282 U. S. 687. This is so even where the documents sought have been used at the trial for the purpose of refreshing a witness's recollection. *United States* v. *Socony-Vacuum Oil Co.,* 310 U. S. 150, 233, 234. And, where the documents have not been used for that purpose (as in the instant case), the trial court's discretion is even greater. *Goldman* v. *United States, supra.* Since the appropriate action on a motion to produce made in connection with the examination of a witness depends on the significance of the fact offered for proof, which in turn depends on "numerous and subtle considerations difficult to detect or appraise from a cold record * * *," the trial court's discretion should be upheld absent "a clear showing of prejudicial abuse of discretion." Cf. *Michelson* v. *United States,* 335 U. S. 469, 480.

Petitioner on four occasions, twice during the trial and twice in the course of the hearing on petitioner's

motion for a new trial, moved for the production of certain F. B. I. reports by or concerning two Government witnesses, Matusow (*supra,* pp. 10–12) and Ford (*supra,* pp. 8–10). Each of the four requests sought production of a separate category of reports, and each category in turn related to a specific conversation or period of time. In all four instances, the requests were denied. When these rulings of the trial court are examined in the setting in which they were made, their correctness becomes apparent, it is clear there was no abuse of discretion. Moreover, assuming *arguendo* that any of these rulings were erroneous, the error was not sufficiently prejudicial to warrant reversal.

A. NO PROPER FOUNDATION FOR THE COMPULSORY PRODUCTION OF THE REPORTS WAS LAID BY PETITIONER

1. *Requests for production of reports during the trial*

a. *Request for Matusow's reports relating to conversations in July, 1950.*

Petitioner opened his cross-examination of Matusow at the trial by developing the fact that Matusow had reported orally and in writing to the F. B. I. with respect to the conversations he had had with petitioner in July, 1950 (R. 293–295). Thereupon, without any attempt to develop a foundation for his request, petitioner asked that all such reports be produced for inspection by the court, and that such portions as contradicted the witness's testimony be made available to petitioner (R. 295–296). Petitioner placed principal reliance on the decision in *United States* v. *Krulewitch,* 145 F. 2d 76 (C. A. 2), reversed on other grounds, 336 U. S. 440. After argument on the motion (R. 295–303), during which Government

counsel pointed out that, so far as appeared, "this witness has not varied one particle from any of those statements he has made and the statements he is making on the witness stand now" (R. 300), the court denied the motion (R. 302).

This ruling, we submit, was not an abuse of discretion. Under the circumstances, petitioner's motion contemplated a "blind fishing expedition" of the sort this Court condemned in *Gordon* v. *United States*, 344 U. S. 414, 419. In the *Gordon* case, the one witness upon whom "the Government's case [might] stand or fall" (344 U. S. at 417) admitted on cross-examination that, prior to his final statement to the Government implicating the defendants, he had made three or four statements which did not implicate them.[11] The inconsistency between the earlier statements and the testimony was thus conceded. In holding that the defendants' motion to compel production of these earlier statements should have been granted, the Court emphasized the foundation laid for the motion (344 U. S. at 418–419):

[11] Petitioner seeks to analogize the instant case to *Gordon* by alleging that the Government's case for proving petitioner's connection with the Communist Party as of April 28, 1950, was dependent upon the credibility of Matusow, who was the "only" witness to testify for the period following that date (Br. 26). This, however, is not true. Petitioner overlooks the testimony of Ford, who remained a member of the Communist Party until September, 1950 (*supra*, p. 10), and who acted as security officer of the Party in addition to being, together with petitioner, a member of the State Board of the Communist Party of New Mexico (R. 106–107, 115; *supra*, p. 10). Ford testified that up to September, 1950, he knew of no disciplinary action of any kind taken against petitioner by the State Board (R. 119), and that petitioner was not replaced as a member of the State Board up to that date

> By proper cross-examination, defense counsel laid a foundation for his demand by showing that the documents were in existence, were in possession of the Government, were made by the Government's witness under examination, *were contradictory of his present testimony, and that the contradiction was as to relevant, important and material matters which directly bore on the main issue being tried:* the participation of the accused in the crime. [Emphasis added.]

The Court concluded "that *upon the foundation that was laid* the [trial] court should have * * * ordered production of the documents" (emphasis added) (344 U. S. at 419).[12] The Court thus recognized the well-established rule that a trial judge is not required to grant such a motion in the absence of a showing that the reports sought are contradictory to the witness's

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(R. 133). Petitioner also ignores the testimony of Jesus Terrazas that at union meetings in the pre-affidavit period petitioner stated that he did not want the members to require the leaders to sign non-Communist affidavits (R. 237–238); that petitioner made a speech in July, 1950, concerning a nation-wide strike (R. 348–349, 355) to be called in conjunction with the Mexican Miners Union (R. 355); and that petitioner, throughout 1950, 1951, and 1952, urged members of his union to read the *Daily People's World* and *National Guardian*, which "bring out the truth to the people" (R. 348). As correctly pointed out by the court below, "The Government's total proof that appellant was so connected with the Communist Party before and after that date [April 28, 1950] was overwhelming" (R. 510), and "There was ample evidence before the jury at the trial to warrant a conviction without the testimony of Matusow" (H. 844).

[12] It is by no means clear, it should be added, that the Court in *Gordon* would have reversed on this ground alone. The Court further held that the trial court erred in excluding from evidence a transcript of proceedings based on the same events in

present testimony (or in some other way exculpatory in nature) "as to relevant, important and material matters." The *Krulewitch* decision, so heavily relied upon by petitioner (Br. 27, 28, 30), is itself authority for this rule.[13]

An examination of the record in this case fails to disclose that any such showing was made. As a matter of fact, no attempt whatever was made to demonstrate that the prior statements of the witness were contradictory of his present testimony. And petitioner so concedes (Br. 29). Cf. *Shelton* v. *United States*, 205 F. 2d 806, 814–815 (C. A. 5), petition for writ of certiorari dismissed by petitioner, 346 U. S.

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another court against the witness. 344 U. S. at 417, 421–422. That this Court might well have affirmed the conviction, had the record revealed only the error discussed in the text, is suggested by its statement in conclusion that "[w]e believe * * * that the *combination* of these *two* errors was sufficiently prejudicial to require reversal" (*id.* at 422, emphasis added).

[13] In *Krulewitch*, as in *Gordon*, the statement in question "completely exculpated the accused" and was flatly inconsistent with the testimony of the Government witness. Emphasizing these facts, Judge Learned Hand expressly distinguished the situation where no such foundation had been laid. 145 F. 2d at 78–79. See also *United States* v. *Cohen*, 145 F. 2d 82, 92 (C. A. 2), certiorari denied, 323 U. S. 799. This distinction was re-emphasized by the Second Circuit in *United States* v. *Ebeling*, 146 F. 2d 254, 257 (C. A. 2), and *United States* v. *De-Normand*, 149 F. 2d 622, 625–626 (C. A. 2), certiorari denied, 326 U. S. 756. While it is true that in some of these cases the trial judge had examined the requested documents, none of the decisions even deals with the question of when such examination must be ordered. And, as pointed out *infra* (pp. 31–32), the fact that there has been such examination in other cases lends no support to petitioner's conclusion that his conviction should be reversed because of the failure of the trial judge in this case to order such examination. The issue here, it must be stressed,

892; *Scanlon* v. *United States*, 223 F. 2d 382, 385–386 (C. A. 1); *United States* v. *Remington*, 191 F. 2d 246, 251 (C. A. 2), certiorari denied, 343 U. S. 907. Indeed, Matusow was not even asked whether his reports contradicted his trial testimony.

Petitioner contends, however, that the court below misapplied the holding of the *Gordon* case since the demand there was for direct access to the documents, whereas here the request was for the documents to be submitted to the court for its inspection (Br. 29). This attempted distinction is without merit. Regardless of whether the documents would be turned over to the defendant or to the court, the danger of a "blind fishing expedition" (*Gordon* v. *United States*, 344 U. S. at 419) is still present.[14] Under the procedure pro-

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is not whether trial judges have this power, but whether, in the particular circumstances presented, the trial judge in this case abused his discretion in exercising that power.

See also *Arnstein* v. *United States*, 296 Fed. 946, 950 (C. A. D. C.), certiorari denied, 264 U. S. 595; *D'Aquino* v. *United States*, 192 F. 2d 338, 375 (C. A. 9), certiorari denied, 343 U. S. 935; *Christoffel* v. *United States*, 200 F. 2d 734, 737–739 (C. A. D. C.), reversed on other grounds, 345 U. S. 947; *Little* v. *United States*, 93 F. 2d 401, 407 (C. A. 8), certiorari denied, 303 U. S. 644; *United States* v. *Lightfoot*, 228 F. 2d 861, 868 (C. A. 7), pending on writ of certiorari, No. 32.

The Ninth Circuit decision in *Fisher* v. *United States*, 231 F. 2d 99, on which petitioner (Br. 27–28) also relies, is not to the contrary. It merely represents a particular application of the general rule recognized in the *Gordon* case, and is not authority for the proposition that the trial court in this case abused its discretion in the different circumstances involved here.

[14] That a "blind fishing expedition" was precisely what petitioner had in mind is clear from his statement in the argument on the motion (R. 298):

"Now, Your Honor, if we had the documents we would be in a position to ask the witness whether he hadn't said something in

posed by petitioner, the function of establishing the relevancy of the documents would merely be shifted from the defendant to the judge. To require such a procedure, without any preliminary showing or foundation, would not only unduly burden the trial courts but would substantially infringe upon their time-honored discretion in the disposition of such evidentiary matters. See *Scanlon* v. *United States,* 223 F. 2d 382, 385–386 (C. A. 1). The rule urged by petitioner, moreover, disregards the legitimate interest that each party—including the Government—has in safeguarding the privacy of its files, particularly where the documents in question were obtained in confidence. Production of such documents, even to a court, should not be compelled in the absence of a preliminary showing by the party making the request. Cf. *Hickman* v. *Taylor,* 329 U. S. 495, 512; *Bowman Dairy* v. *United States,* 341 U. S. 214, 220, 221; Rules 16 and 17 (c), F. R. Cr. P.

We do not, of course, suggest that federal courts are without power, in circumstances such as presented in this case, to compel the production of F. B. I. reports for these purposes. This power has, indeed, been exercised in some instances.[15] But the fact that the trial court here could, in its discretion, have ordered the

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that report which was contradictory of what he said here * * *. [*I*]*f there is something contradictory in those reports*, then we are entitled to use it as a part of the search for the truth, and in order to avoid the situation where we would be rummaging through Government files." [Emphasis added.]

[15] In particular, petitioner relies on *United States* v. *Flynn*, 130 F. Supp. 412 (S. D. N. Y.), where Judge Dimock inspected certain F. B. I. documents reporting statements made by Matusow. This was, of course, within that court's discretion in the circumstances

production of the reports for its own inspection, and the fact that other courts in comparable cases have done so, certainly do not support a conclusion that the trial court was obliged to do so in this case. It must again be emphasized that the issue is not one of power, but whether the exercise of that power in the special circumstances presented here constituted an abuse of discretion. And discretion, if it is to have any meaning at all, means a discretion to make rulings which, on the basis of the printed record, might even appear to a reviewing court to be mistakes.

b. *Request for Ford's reports.*

Government witness Ford had preceded Matusow to the witness stand. During cross-examination, Ford testified that he had reported in writing or orally to the F. B. I. on every meeting attended by him (R. 170). Subsequently, following the completion of Matusow's examination and the demand for production of the latter's reports, *supra,* petitioner made the same motion for compulsory production of the reports made by Ford. This motion likewise was denied (R. 321–322).

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of that particular case, and does not show that the trial judge here abused his discretion in the different circumstances of this case. Petitioner also ignores the fact that Judge Dimock, solely on the basis of the trial transcript, determined that, as to all but two of the defendants in that case, the jury could not have reasonably reached a different result even without Matusow's testimony and accordingly denied those defendants a new trial. The court below, in affirming the denial of petitioner's motion for a new trial, made precisely such a determination in this case (H. 844).

Petitioner's motion was based on the same ground as the request for the Matusow reports. Not only was there a complete failure to lay a foundation, but petitioner's counsel did not even ask the witness whether or not his reports contained anything contradictory to his present testimony. The request appears to have been nothing more than an afterthought following the prior motion, and was a mere "fishing expedition" in the truest sense. Being similar in all respects to the prior request for production of the Matusow reports, this request stood on no better ground and is governed by the same principles (*supra*, pp. 26–32), which in the interest of brevity need not be repeated.

2. *Requests for production of reports during the hearing*

a. *Request for Agent Crandall's report.*

At the hearing on the motion for a new trial, Matusow under cross-examination by the Government testified concerning a conversation with an FBI agent, Clarence Crandall, in the latter part of August 1953, prior to the trial of the case. According to Matusow's testimony (H. 68):

> I told the F. B. I. agent I didn't want to testify in the Jencks trial. I didn't feel my testimony was honest. Or, in substance, that is what I told him—I didn't want to ever testify and especially in the Jencks trial that was coming up.

Petitioner subsequently moved for an order requiring the Government to produce the reports of the F. B. I. relating to this conversation (H. 107, 147), again urging (H. 147) in support of the demand *United*

States v. *Krulewitch, supra,* 145 F. 2d 76 (C. A. 2), reversed on other grounds, 336 U. S. 440. The motion was denied (H. 107, 147).

As previously noted (*supra,* pp. 28–32), the production of statements made by witnesses to an investigating agency is not mandatory absent the establishment of a proper foundation, and the *Krulewitch* decision is itself authority for this requirement.[16] Here, too, as in the case of the reports sought at the trial, the requisite showing was not made. No contradiction whatever between the witness's testimony and the report was established or even implied. Moreover, Matusow was at this point a defense witness and counsel was simply seeking to bolster the testimony then being given.[17] Petitoner's request therefore amounted to no more than an attempt at board discovery on a collateral issue, in support of the defendant's own witness, and plainly did not fall within the rationale of *Gordon* v. *United States, supra.* See *Shelton* v. *United States,* 205 F. 2d 806, 814–815 (C. A. 5).

Moreover, the argument now made by petitioner in support of the compulsory production of the F. B. I. report is quite different from the reason advanced in the trial court. Now petitioner places primary emphasis on the remark, "I didn't feel my testimony was honest," in the above-quoted statement. But at the hearing no mention was made of this remark as a basis for requiring production of the report (H. 107, 147). In fact, when Crandall (who was later put

[16] See note 13, *supra.*

[17] In this connection, see opinion of the court below at H. 846.

on the stand by the Government) was asked by the Government counsel: "Did [Matusow] say to you he had been a dishonest witness * * *?", petitioner's counsel immediately objected on the ground that "Matusow did not testify that he had made any such statement to the F. B. I. man in Santa Fe" (H. 755–756).[18] And, after Crandall had denied that Matusow had made such a statement,[19] defense counsel made no effort to cross-examine Crandall as to the matter. In determining whether the trial court abused its discretion in refusing to compel production of the report, the trial court's action must be judged as of that time—not on the basis of arguments suggested by a subsequent study of the record. Particularly is this so in view of the express denial by defense counsel

[18] This interpretation by petitioner's counsel of the above-quoted statement of Matusow's testimony has a substantial basis in fact. The statement is certainly not unambiguous. It is entirely possible that the remark, "I didn't feel my testimony was honest" was intended merely to reflect Matusow's subjective motive for telling Crandall of his reluctance to testify, not something he actually told Crandall. This interpretation of the statement is supported by Crandall's testimony that Matusow never made the remark to him.

[19] Crandall testified that Matusow visited him twice and telephoned him twice while he, Matusow, was in Santa Fe, New Mexico, in 1953 (H. 753–755). In no instance did Matusow ever hint that his testimony was not honest (H. 754). During their first conversation, Matusow stated that he was attempting a reconciliation with his estranged wife and was fearful that the resulting publicity from his further testimony might interfere with the attempted reconcilation (H. 754). Subsequent to this first conversation, however, Matusow called Crandall to inform him of his whereabouts "in the event he was needed in court" (H. 755). He also furnished Crandall with his address in Washington, D. C., so that he could be reached, if needed, for further testimony (H. 755).

at the hearing that Matusow made the statement now relied upon.

b. *Request for Matusow's reports to Agent Burttram*

The final request by petitioner for production of F. B. I. reports occurred on the last day of oral testimony submitted during the hearing on the motion for new trial. Matusow, under redirect examination, stated that, although he was a member of the Communist Party, he was not a member in the State of New Mexico, and that he had not attended any Communist functions there (H. 660). He alleged that the reports made to Agent Burttram of the F. B. I. in August, 1950, would bear out these statements (H. 661). He also asserted that in those reports he did not state that petitioner was a Communist or that petitioner had identified himself as a Communist (H. 661–662). Petitioner thereupon requested production of all F. B. I. reports dealing with reports Matusow had given to Agent Burttram on the ground that they would corroborate Matusow's present testimony (H. 663–664). The motion was denied (H. 664).

The court's ruling was correct. Even assuming *arguendo* that production of the documents could be compelled to corroborate a recanting witness's testimony which is in conflict with the witness's trial testimony as to these matters. Notwithstanding the careful language employed by Matusow to create the illusion of a contradiction, his testimony at the hearing as to these matters did not traverse a single statement he had made in the

trial. The record shows that Matusow's testimony at the trial, as a Government witness, concerned only certain conversations he had had with petitioner in 1950 (see Statement, *supra*, pp. 10–12). At no time during the trial did Matusow testify that he was himself a member of the Communist Party of the State of New Mexico; nor did he state that petitioner was a member of the Communist Party,[20] or that petitioner had said that he was a member of the Communist Party. Moreover, in testifying at the hearing some fourteen months later, Matusow avoided stating that his reports to the F. B. I. were related to the evidence he had furnished at the trial. His testimony was carefully confined to statements that the reports he had made to the agent did *not* contain certain information and, as already pointed out, the information which Matusow stated was *not* contained in the reports concerned matters as to which he did *not* previously testify. Thus petitioner, having failed to develop any inconsistency whatever between Matusow's testimony at the hearing and at the trial, or any relevant evidence going to the issue of his innocence, was not entitled as a matter of right either to direct access to the documents or to inspection by the court. See *Gordon*

[20] The recantation alleged that "[t]here was no basis for my stating that [petitioner] was a member of the Communist Party *at the time I stated so* in Court" (emphasis added) (H. 10). Besides the fact that Matusow did not make such a statement at the trial, the recantation involves a latent ambiguity, since it could be construed to mean that Matusow had no basis for stating that petitioner was, at the time of the trial (*i. e.*, in January, 1954), a member of the Communist Party. The central issue, of course, is whether petitioner was a member in April, 1950.

v. *United States, supra.* Compare *Boehm* v. *United States,* 123 F. 2d 791, 806 (C. A. 8), certiorari denied, 315 U. S. 800.

Nor can petitioner justify the compulsory production of the reports on the ground that they would help rehabilitate a witness whose credibility was impeached on cross-examination.[21] See *Ellicott* v. *Pearl,* 10 Pet. 412, 438–439; *Goins* v. *United States,* 99 F. 2d 147, 150 (C. A. 4), writ of certiorari dismissed, 306 U. S. 622; *Beaty* v. *United States,* 203 F. 2d 652, 656 (C. A. 4), remanded to C. A., 348 U. S. 905; *Goldberg* v. *United States,* 213 F. 2d 734, 736 (C. A. 4); *DiCarlo* v. *United States,* 6 F. 2d 364, 366 (C. A. 2), certiorari denied, 268 U. S. 706. Matusow's assertions, as to which corroboration was sought, were not elicited in response to issues raised on cross-examination by the Government, nor do they contradict or even involve matters to be found in the trial record concerning which he had been cross-examined. Here the reports were demanded merely to corroborate certain *irrelevant* statements of Matusow, petitioner's own witness, on redirect examination.[22] Cf. *Bates* v. *Preble,* 151 U. S. 149, 157; *Vicksburg & Meridian Rail-*

[21] Petitioner argues that the documents were admissible to rehabilitate Matusow as the foundation showed them to be consistent with his direct testimony and given prior to the facts showing fabrication or motive to do so (Br. 39, 41–42).

[22] For the same reason, the "best evidence" rule as urged by petitioner (Br. 27, 35–36) has no application here. See *Gordon* v. *United States,* 344 U. S. 414, 421. ("Traditional rules of admissibility prevent opening the door to documents which merely differ on immaterial matters.") At no time during these proceedings, morever, did the Government attempt to prove the content of these

road v. *O'Brien*, 119 U. S. 99, 102; *Stockyards Loan Co.* v. *Nichols*, 260 Fed. 393, 395 (C. A. 8), certiorari denied, 245 U. S. 668; *Gunning* v. *Cooley*, 30 F. 2d 467, 469 (C. A. D. C.), affirmed, 281 U. S. 90.

B. IN ANY EVENT, THE TRIAL COURT'S REFUSAL TO COMPEL PRODUCTION OF THE REPORTS WAS NOT PREJUDICIAL

As the *Gordon* case illustrates,[23] even assuming that the trial court's refusal to compel production of the requested F. B. I. reports constituted an abuse of discretion, there would remain the question whether the error was prejudicial. Rule 52, F. R. Cr. P.; see also *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 233, 234. Just as the particular setting of the trial court's rulings must be examined in determining whether there was an abuse of discretion (*supra*, pp. 26–38), so too the broader context of the rulings must be considered in determining whether the asserted error was prejudicial. In this sense the correctness of the trial court's rulings (which issue petitioner seeks to have reviewed) cannot be extricated and treated separately from the sufficiency of the evidence to support the conviction and the denial of a new trial (which issue petitioner has abandoned in this Court). Only if "substantial rights" have been infringed would a reversal ever be justified. Rule 52, F. R. Cr. P.

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reports. And, in any event, where the witness' present recollections are unimpaired as to the facts testified to, introduction of the reports in evidence is not required. Cf. *Bates* v. *Preble*, 151 U. S. 149, 157; *Vicksburg & Meridian Railroad* v. *O'Brien*, 119 U. S. 99, 102; III Wigmore, *Evidence* (3d ed.) § 738, p. 76.

[23] See note 12, *supra*.

In this respect, comparison with the factual situation in *Gordon* is illuminating. In *Gordon,* the statements sought by the defendants "directly bore on the main issue being tried: the participation of the accused in the crime." 344 U. S. at 418. Here, in contrast, not even petitioner claims that any of the reports would have shown, or ever tended to show, petitioner's innocence of the crime charged. At the very most, they might have helped to impeach the credibility of certain Government testimony. Even for this purpose, the value of the reports was wholly speculative. As already noted, the reports requested at trial (*supra,* pp. 26–27, 32–33) were not shown to be inconsistent with any testimony on any issue—let alone "on the main issue being tried." And the reports requested at the post-trial hearing (*supra,* pp. 33–34, 36) were sought only for the purpose of corroborating certain statements *not in conflict* with any of the trial testimony.

In *Gordon,* moreover, it was pointed out that there "the Government's case may stand or fall on the jury's belief or disbelief of one witness"—the witness whose prior inconsistent statements were requested by the defendants. 344 U. S. at 417. Petitioner seeks to attach similar importance to Matusow's testimony (Br. 26, 38). But the court below expressly held (*a*) that the evidence supported the trial court's finding that Matusow testified truthfully at the trial and that his recantation was false[24] (H. 842), and (*b*) that in

[24] A signal characteristic of such a case as the present is that the testimony of a recanting witness in support of an application for a new trial has universally and consistently been regarded

any event "There was ample evidence before the jury at the trial to warrant a conviction without the testimony of Matusow" and "that, upon the whole record, it is manifest that the testimony without Matusow was so convincing that it is difficult to justify the thought that any other result could have been reached if Matusow had not been present as a witness". (H. 844). Not having sought review of this holding, petitioner is in no position to complain of prejudice in connection with reports sought to impeach Matusow's testimony.

Moreover, the holding in question, under settled law, would appear binding in any event. See *United States* v. *Johnson*, 327 U. S. 106, 111; *Larrison* v. *United States*, 24 F. 2d 82, 88 (C. A. 7); *Martin* v. *United States*, 17 F. 2d 973, 976 (C. A. 5), certiorari denied, 275 U. S. 527. In *United States* v. *Johnson, supra*, also involving a motion for a new trial on the ground of newly discovered evidence, Johnson, in support of his claim, submitted to the court numerous affidavits alleging that the prosecuting witness committed perjury on the stand. After careful scrutiny of these and the many counter-affidavits against the motion, the trial court found, as in the instant case, that there was nothing to show the commission of perjury and that the witness told the truth at the trial. The Court of Appeals reversed, granting a new trial. Upon certiorari, this Court, reversing the Court of Appeals,

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with the utmost suspicion. *United States* v. *Troche*, 213 F. 2d 401 at 403 (C. A. 2); *Martin* v. *United States*, 17 F. 2d 973, 976 (C. A. 5); *Harrison* v. *United States*, 7 F. 2d 259, 262 (C. A. 2); *People* v. *Shilitano*, 218 N. Y. 161, 170; *Larrison* v. *United States*, 24 F. 2d 82, 87–88 (C. A. 7).

held that it is not within the province of appellate tribunals to review orders issued pertaining to motions for a new trial, when the review is sought to correct "erroneous findings of fact." The Court stated (327 U. S. at 111–112):

> While the appellate court might intervene when the findings of fact are wholly unsupported by evidence, cf. *United States* v. *Socony-Vacuum Oil Co.*, 310 U. S. 150, 247; *Glasser* v. *United States*, 315 U. S. 60, 87, it should never do so where it does not clearly appear that the findings are not supported by any evidence.

See also *Weiss* v. *United States*, 122 F. 2d 675, 692 (C. A. 5), certiorari denied, 314 U. S. 687; *United States* v. *Troche*, 213 F. 2d 401 (C. A. 2).

Here, not only did petitioner offer no support for his motion for a new trial other than the "recantation" by Matusow,[23] but the Government, on the other hand,

[23] Petitioner contends that the court, by not ordering the production of documents, prevented itself from drawing an inference against the Government for "failure to produce stronger evidence within its power to present" (Br. 36). This, however, is a matter of discretion for the court to be determined by the relevant circumstances surrounding the case. On the other hand, it is particularly significant that petitioner, allegedly aware of the falsity of Matusow's trial testimony, failed to call as witnesses those persons named by Matusow as being present during the conversations and lecture with petitioner, and as to whom there were no recantations (*i. e.*, Abraham Marcus (R. 244), Craig Vincent (R. 245), Joseph DiSanti (R. 245)), in order to refute *directly* this alleged false testimony, without obliging petitioner himself to take the witness stand. No inference that the testimony of an uncalled witness would be unfavorable can, of course, be raised against one party when the witness is accessible to either party. Cf. *United States* v. *Beekman*, 155 F. 2d 580, 584 (C. A. 2); *Erie R. Co.* v. *Kane*, 118 Fed. 223, 239 (C. A. 6), certiorari denied,

produced ten witnesses and eighteen exhibits in rebuttal to establish the unreliability of the recantation. That there was no error by the trial court in denying a new trial is made manifest by an examination of the summary of this evidence in the Appendix, *infra*, pp. 64–71, particularly that portion relating to the events leading up to the recantation. See also the opinion of the court below at H. 837–843. The trial judge, having had the advantage of hearing the testimony and observing the demeanor of the witness at the original trial, was well qualified to pass on the question of truth or falsity of the recantation.[26] Cf. *United States* v. *Johnson*, 327 U. S. at 112; *Harrison* v. *United States*, 191 F. 2d 874, 876.

In addition, the court had before it, among other pertinent evidence,[27] the uncontradicted documentary

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207 U. S. 593; II Wigmore (3d ed.) § 288. But when there is a likelihood of bias on the part of the uncalled person in favor of the one party, that person is not in the true sense "equally available" to both; and, except in unusual circumstances, a party's employee or fellow union officers and friends come within that category. Cf. *United States* v. *Beekman*, *supra*; *Scanlon* v. *United States*, 223 F. 2d 382, 391–392 (C. A. 1); 5 A. L. R. 2d 912. Hence, the production of weak or no evidence at all when strong is available to refute a substantial portion of the witness's damaging testimony "can lead only to the conclusion that the strong would have been adverse * * *. Silence then becomes evidence of the most convincing character." *Interstate Circuit* v. *United States*, 306 U. S. 208, 226.

[26] The fact that Judge Dimock in *United States* v. *Flynn*, 130 F. Supp. 412 (S. D. N. Y), accepted Matusow's recantation in that case certainly does not require the conclusion that his recantation here, of an entirely different nature in an entirely different case, must also be accepted. See note 15, *supra*.

[27] Thus, for example, there was uncontradicted testimony during the hearing (H. 530, 534–535, 540) that petitioner had ad-

evidence that Matusow, just one month prior to filing his affidavit of recantation and during the last tape-recording session with his publisher, stated: *"I knew Jencks was a Party member and I said so.* I can't say here that Jencks wasn't a Party member after he signed the affidavits because *I know that he was"* [emphasis added] (H. 693–694; Appendix, *infra,* p. 69). Moreover, the trial judge had, at his ready disposal, the record of the trial testimony and was aware that those matters which Matusow asserted would be contradicted by the F. B. I. reports were matters as to which he had not testified at the trial. Having all those facts before him, the trial judge did not commit a prejudicial abuse of his discretion in denying petitioner's motions for a new trial and for compulsory production of the reports requested at the hearing.

II

THE TRIAL COURT PROPERLY CHARGED THE JURY ON THE ISSUES OF MEMBERSHIP AND AFFILIATION

A. INSTRUCTION ON MEMBERSHIP

The jury was charged, *inter alia,* that (R. 415–416):

> In considering whether or not the defendant was a member of the Communist Party, you may consider circumstantial evidence, as well as direct. You may consider whether or not he attended Communist Party meetings, whether or not he held an office in the Communist Party, whether or not he engaged in other conduct consistent only with member-

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mitted the truth of a particularly significant aspect of Matusow's trial testimony which he had recanted. See Appendix, *infra,* p. 65, n. 1.

> ship in the Communist Party and all other evidence, either direct or circumstantial, which bears or may bear upon the question of whether or not he was a member of the Communist Party on April 28, 1950.

Petitioner contends (Br. 44–69) that the instruction failed to give proper guidance to the jury as to the issue of membership. This contention, we submit, was properly rejected by the court below as "wholly unconvincing" (R. 515).[28]

1. It is urged (Br. 44–45) that "The court ignored the legal principles usually operative in defining and evaluating the membership relation," *i. e.*, the principles "that membership in a voluntary association is consensual and that the act of joining and of acceptance as such is manifested by compliance with the formalized requirements of membership laid down by the organization itself [in its constitution]". Nothing in the pertinent statutes or this Court's decisions—especially *Galvan* v. *Press*, 347 U. S. 522—justifies an instruction based on such principles.

When Congress enacted the Labor Management Relations Act of 1947, it did not undertake to define the term "member." Nor did Congress do so in enacting similar provisions in the Internal Security Act of 1950.[29] *Galvan v. Press*, 347 U. S. 522, 526. The

[28] As the court below pointed out (R. 515), the charge in this case followed closely the charge given by the trial court and sustained on appeal in *Hupman* v. *United States*, 219 F. 2d 243 (C. A. 6), certiorari denied, 349 U. S. 953.

[29] 64 Stat. 987, 1006, § 22, 50 U. S. C. §§ 781 *ff.*, as amended, the Immigration and Nationality Act of June 27, 1952, c. 477, 66 Stat. 163, 204, § 241 (a).

sponsor of the Act, Senator McCarran, repeatedly stated that the term "was intended to have the same meaning in the 1950 Act as had been given it by the courts and administrative agencies since 1918." [30] *Id.* at 527. And, in the Communist Control Act of 1954,[31] Congress—in language closely parallel to the membership instruction challenged here—merely itemized several types of evidence which a jury may consider for the purpose of determining membership in the Party, culminating with the proviso that the enumeration of the "above subjects of evidence" shall not limit the inquiry into and consideration of "any other subject of evidence" on membership, etc.

Moreover, in view of the abundant evidence adduced before Congress regarding the clandestine organizational structure of the Party [32] and the necessity for "secret" or "underground" members to effectuate its policies (see *Dennis* v. *United States*, 341 U. S. 494, 498; *Frankfeld* v. *United States*, 198 F. 2d 679, 684–685 (C. A. 4), certiorari denied, 344 U. S. 922), it is inconceivable that Congress could have intended

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[30] To illustrate what "member" did not cover, Senator McCarran quoted language from *Colyer* v. *Skeffington*, 265 Fed. 17, 72 (D. Mass.), stating that

"Congress could not have intended to authorize the wholesale deportation of aliens who, accidentally, artificially, or unconsciously in appearance only, are found to be members of or affiliated with an organization of whose platform and purposes they have no real knowledge." See *Galvan* v. *Press*, 347 U. S. at 527.

[31] See § 5, 68 Stat. 777 (50 U. S. C. [Supp. III] 844).

[32] See the Government briefs in this Court in *Communist Party* v. *Subversive Activities Control Board*, 1955 Term, No. 48, pp. 43–69; *Dennis* v. *United States*, 1950 Term, No. 336, pp. 40–47; and *Yates* v. *United States*, Nos. 6, 7, 8, this term, at pp. 170–174.

"member," as used in Section 9 (h) of the Labor Act, to mean only one who has complied with technical requirements set forth in a self-serving document prepared by the Party and called its constitution. As a matter of fact, the very nature of the Party militates against the use of its constitution to determine its true membership. The Communist Party, to assure maximum efficiency in carrying out its aims, admonished members to conceal their membership (R. 110) and did not issue membership cards (R. 132), provided a "membership at large" for those persons whose open acknowledgment of membership would jeopardize their strategic and important positions in labor unions and other organizations (R. 335–336), refrained from keeping membership rolls (R. 133), and held secret meetings without keeping minutes thereof (R. 336).

In *Galvan* v. *Press, supra,* brought under the deportation section of the Internal Security Act, the question presented to this Court was whether the alien was a "member" of the Communist Party. The alien urged that he had not joined the Party at all, or, if he had joined, he was unaware of the Party's true purposes and program. Holding, however, that the evidence justified the conclusion that he was a "member", the Court pointed out that the alien had been asked to join the Party by one he assumed to be an organizer, that he had attended numerous meetings, that he refrained from applying for citizenship lest the authorities should learn of his membership in the Party, and that he had been active in and an officer of a Communist-front organization. 347 U. S. at 528–529. On these facts, the Court concluded that the record did not show

a relationship to the Party "so nominal as not to make him a 'member' within the terms of the Act." *Id.* at 529.[33] See also Point I of the Government's brief in *Rowoldt* v. *Perfetto,* No. 34, this term.

In the instant case, the proof (see Statement, *supra,* pp. 5–13) established that petitioner held key positions in the Party in New Mexico, repeatedly received instructions from Communist Party leaders, attended closed meetings of the Party, reported on the activities of Communists in veterans' organizations, assisted in plans for the organization of Communist Party groups in union locals, and served on a committee to promote interests of Mexican-Americans with a view to bringing them into the Communist Party. The evidence further established that petitioner received instructions with respect to the payment of dues to the Communist Party, was accepted by other members of the Party as a member, and on an occasion asserted to a non-Communist that he was a member of the Communist Party.

Hence, the trial court here was merely following the pattern enunciated in *Galvan* v. *Press, supra,* when it charged that, in determining whether or not

[33] The crux of this decision was that the Government in a deportation proceeding under the statute needed only to show that the alien was knowingly and willingly a member of an organization known as the Communist Party which operates as a distinct and active political organization (347 U. S. at 528), with present or former membership in the Party, in and of itself, being the ground for deportation. *Id.* at 529. Hence, there is no distinction, in determining whether a person is a "member" of the Communist Party, between membership within the meaning of the deportation laws and membership under Section 9 (h) of the Labor Management Relations Act. Cf. *Hupman* v. *United States,* 219 F. 2d 243 (C. A. 6), certiorari denied, 349 U. S. 953.

petitioner was a "member" of the Communist Party, the jury could consider (1) attendance at Party meetings, (2) whether he was an officer of the Party, (3) participation in other conduct consistent *only* with Party membership, and (4) all other evidence, either direct or circumstantial, which bore or may have borne upon whether he was a member on April 28, 1950 (*supra*, pp. 44–45).[34] These factors, in lieu of a formalistic definition, were properly considered in determining whether the evidence justifies the conclusion that one is a "member" of the Communist Party. *Galvan* v. *Press, supra; Hupman* v. *United States, supra; Fisher* v. *United States*, 231 F. 2d 99, 107 (C. A. 9).[35]

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[34] Compare the evidentiary factors which the jury in *Hupman* v. *United States*, 219 F. 2d 243 (C. A. 6), certiorari denied, 349 U. S. 953 (see record filed with this Court, No. 764, O. T. 1954, p. 615a), was told it might consider in determining whether or not the defendant was a member of the Communist Party: (1) whether or not the accused attended Communist Party meetings; (2) whether or not he paid money to the Communist Party; (3) whether or not he took instructions from Communist Party leaders or officers; (4) whether or not he took part in the dissemination or distribution of Communist literature; (5) whether or not he engaged in other evidence, either direct or circumstantial, which may bear upon the question of whether or not he was a member of the Communist Party.

It is noteworthy that, in charging the jury as to item 5 in the present case, the court limited the jury's consideration to conduct consistent *only* with membership in the Communist Party (see *supra*, pp. 44–45).

[35] Petitioner's reliance (Br. 44, 61) on the *Fisher* decision is misplaced. After charging that "member" when applied to the Communist Party has no unusual or different meaning apart from its normal usage, the trial court there limited the remainder of the instruction solely to a dictionary definition of "member" as "one of the persons composing a society, community, or party; an in-

2. Petitioner also objects (Br. 45, 51, 64) that the instructions do not require that petitioner's "act of joining" the Party be proved.[36] Admittedly there is no evidence in the record of the circumstances under which petitioner joined the Communist Party, yet there is overwhelming evidence that he was a member. Certainly the act of joining at some time in the past may be inferred from the evidence that he was a member later. To be a member at a given time, he must have joined in the past. Section 9 (h) does not require a union officer who executes a non-Communist affidavit, "I have not joined the Communist

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dividual who belongs to an association." Holding this to be error, the Ninth Circuit reversed and stated that various factors as set down in *Galvan* v. *Press*, *supra*, must be considered to justify the conclusion that a person is a member of the Communist Party, and that the jury should have been reminded of these factors rather than merely synonyms of "member" (231 F. 2d at 107). The court further pointed out that, although neither *Galvan* v. *Press* nor the Communist Control Act, *supra*, deal directly with the question of proper instructions to the jury in a prosecution for filing a false non-Communist affidavit, "they are indications of what the Supreme Court and the Congress believe to be the components of the often used phrase 'member of the Communist Party'" (231 F. 2d at 107, n. 2).

[36] In support of his contention, petitioner quotes (Pet. 26) a statement of this Court that: "In proving that one swore falsely that he is not a Communist, the act of joining the Party is crucial." *American Communications Association* v. *Douds*, 339 U. S. 382, 410–411. The Court was not there addressing itself to the requirements of proof of membership, but was rather contrasting the problem of proving the objective fact of membership with the problem of proving the subjective state of mind of one who falsely swears that he does not believe in the overthrow of the Government by force. In any event, the statement affords no basis for any conclusion that the act of joining cannot be proven by evidence of membership.

Party." It requires him to state, "*I am not a member* of the Communist Party or affiliated with such party" (Govt. Ex. 1, R. 383). The vital issue revolves around the affiant's *status as a current member* of the Communist Party at the time he executes the affidavit. It cannot be argued, for example, that a union officer would become immune to prosecution upon the death of those who could testify to his joining the Party if sufficient evidence were available to establish that he was a member when he filed the affidavit.

3. Petitioner's further objection (Br. 55–60) that the instruction permitted the jury to base its finding of membership on pre-affidavit evidence alone, or upon any part of the pre-affidavit evidence, is without substance.[37] Petitioner confuses (a) what evidence the

[37] In this connection, petitioner argues (Br. 48–50) that the instructions on membership were defective because they called the jury's attention to attendance at meetings and holding office as the criteria of membership; that therefore, since there was no evidence that petitioner attended Communist Party meetings or held a Party office in the post-affidavit period, the jury must necessarily have based its finding of membership on April 28, 1950, solely upon pre-affidavit evidence. This is an obvious effort to "pin down" the Government's case to whatever preconceived "criteria" petitioner thinks advantageous to his side of the case, while blandly disregarding the totality of probative evidence from which the jury could and did conclude beyond a reasonable doubt that petitioner was a member of the Communist Party on April 28, 1950. Moreover, petitioner ignores the testimony of Ford, who remained a member of the State Board of the Communist Party of New Mexico until September, 1950, and was also one of the Party's security officers, that to his knowledge from 1949 to September, 1950, petitioner was never replaced in his position as a member of the State Board (R. 106–107, 108, 115, 133). See also note 11, *supra*.

jury was told it might *consider* along with other evidence and (b) what evidence it should base its finding upon. Petitioner overlooks the trial court's other instructions to the jury (R. 417) that its verdict must be based upon *all* the evidence, and that in determining the issues in this case it must consider *all* the evidence and the testimony of *all* the witnesses.[38] The jurors were also instructed (R. 418) that if they had a reasonable doubt that petitioner was a Party member on April 28, 1950, they would have to acquit him. In addition, they were instructed that a verdict of "not guilty" must be returned if the evidence could be reconciled with any reasonable hypothesis consistent with the innocence of petitioner (R. 410), and that in arriving at a verdict of guilty upon circumstantial evidence the circumstances must be consistent with each other and must be consistent with the idea of guilt and must exclude every other reasonable hypothesis (R. 416). Thus, far from being a license to the jury to base a finding of membership upon a capricious selection of evidence at random from any part of the record, the trial judge's charge threw additional

[38] The necessity for consideration of *all* the evidence was made unmistakably clear to the jury throughout the trial court's instructions, including those on reasonable doubt (R. 409–410), proof of intent and circumstantial evidence (R. 415–416), and burden of proof as to each and every essential element of the crime charged (R. 416–417). Finally, the court charged the jury: "In determining the issues of the case, you will take into consideration all of the evidence adduced at the trial, both positive and circumstantial, bearing upon the respective questions. You should consider the testimony of all the witnesses, the exhibits and the stipulations of counsel and weigh the evidence thus presented carefully, fairly and impartially" (R. 417).

safeguards about petitioner and further assured him of a fair trial.[39]

4. Although no such objection was made in the trial court (see Rule 30, F. R. Cr. P.), it is now urged (Br. 56–60) that the instruction impliedly involved a "presumption of continuance" in contravention to this Court's ruling in *Maggio v. Zeitz*, 333 U. S. 56, 66. See also *Tot* v. *United States*, 319 U. S. 463. In *Maggio*, a "presumption of continued possession" was applied by the trial court, without further inquiry or consideration of other evidence and without regard to the reasonableness of the inference in the light of the particular facts, solely on the basis of the fact that the defendant had possession several years before. In this case, as the court below pointed (R. 511), there was no mention whatsoever of such a presumption in the trial judge's instructions. Moreover, the evidence in this case showed a continuous and definite pattern of conduct by petitioner which could, if accepted by the jury, lead to the conclusion that petitioner was, beyond a reasonable doubt, a member of the Communist Party on April 28, 1950. In short, on the basis of that evidence, the inference that petitioner was a member on that date is a rea-

[39] Moreover, the instructions on circumstantial evidence and reasonable doubt afforded petitioner the maximum protection to which he was entitled upon the theory that he *might* have resigned or ceased to be a member of the Communist Party prior to the date of his affidavit. Of course, since he did not offer any evidence that he had resigned or otherwise severed his connection with the Communist Party, he was not entitled to an instruction on resignation *per se* or any other theory for which there was no support in the evidence.

sonable one.[40] Compare *Tot* v. *United States*, 319 U. S. at 469. Particularly is this so since the evidence related to the post-affidavit period as well as to the pre-affidavit period.[41] In this connection, it is significant that petitioner failed to adduce any evidence of resignation, notwithstanding the ease with which such evidence could have been adduced by him if he had in fact resigned. It is also significant that petitioner does not challenge the sufficiency of the evidence to submit the case to the jury or to support the jury's verdict.

5. Petitioner also contends (Br. 65–69) that the instruction was vague and misleading in that it did not require the jury to confine its judgment to the accused's conception of membership. This contention, however, ignores other instructions, including the following (R. 414):

> I have said that the Government must prove beyond a reasonable doubt that the defendant made the statement that he was not a member of the Communist Party, willfully, knowing it to be false. By "willfully" we mean "intentionally or deliberately" as distinguished from "accidentally or negligently."

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[40] There is obviously no basis for petitioner's suggestion (Br. 58–60) that evidence of certain lawful conduct (*i. e.*, being a member of the Communist Party) cannot be used to prove a course of conduct which is relevant to a criminal charge. In any event, petitioner was not tried or convicted for being a member of the Communist Party; instead, the charge is that he deliberately lied about such membership. Indeed, under present law, mere membership in the Communist Party continues to be a lawful activity. Internal Security Act, § 4 (f), 50 U. S. C. 783 (f).

[41] See note 11, *supra*. And cf. *Hupman* v. *United States*, 219 F. 2d 243, 248 (C. A. 6), certiorari denied, 349 U. S. 953; *Fisher* v. *United States*, 231 F. 2d 99, 108 (C. A. 9).

> The statute uses the words "knowingly and willfully falsifies." This means that he deliberately and intentionally made the statement with the knowledge that it was false at the time he made it.

In any event, the issue is not open for review. It was not raised in the trial court, in the court below, or in the petition for certiorari. In these circumstances, the contention comes too late and is not properly before the Court. Rule 30, F. R. Cr. P.; Rule 40 (1) (d) (2), Revised Rules of this Court.[42]

B. INSTRUCTION ON AFFILIATION

Petitioner also attacks the trial court's instruction on affiliation (R. 417):

> I have said that the second count of the indictment contains the same essential element as the first count, except that the charge is that the defendant was affiliated with the Communist Party instead of charging that he was a member of the Communist Party. Webster's New International Dictionary defines "Affiliate" as follows: "To connect or associate one's self with; to adopt, hence usually to bring or

[42] Petitioner (Br. 60–65) also apparently attempts to reopen the constitutional questions resolved in *American Communications Ass'n* v. *Douds*, 339 U. S. 382. In that case, the Court held that § 9 (h) did not violate the First Amendment and that its terms (*e. g.*, "affiliated") were not void for vagueness. In the latter connection, the Court pointed out that 18 U. S. C. § 1001 covers only those false statements made "knowingly and willfully". 339 U. S. at 412–413. In view of the recency of this decision, we know of no reason warranting re-examination of these constitutional questions.

receive into close connection; to ally; to unite or attach such as a member or branch." Affiliation, as used in subsection (h) of Section 159 of Title 29 of the United States Code, means something less than membership but more than sympathy. Affiliation with the Communist Party may be proved by either circumstantial or direct evidence, or both.

Now, if you find from all of the evidence that has been offered in this case that each and every essential element of the crime charged in the second count of the indictment as I have stated them to you has been proved to the satisfaction of each and every one of you beyond a reasonable doubt, and you also find beyond a reasonable doubt that the defendant, Clinton E. Jencks, was affiliated with the Communist Party on April 28, 1950, you will then find the defendant guilty of the second count of the indictment. If, on the other hand, you find that Government has failed to sustain the burden of proof beyond a reasonable doubt as to any one or more of these essential elements then you should find the defendant not guilty of the second count of the indictment.

At the outset, it should be noted that false swearing as to membership was charged in Count One, that false swearing as to affiliation was separately charged in Count Two, and that following conviction on both counts like sentences were imposed on each count to run concurrently (R. 467–468). In these circumstances, affirmance of the conviction on either count would require that the judgment of the court below be affirmed. *United States* v. *Sheridan*, 329 U. S. 379;

Hirabayashi v. *United States*, 320 U. S. 81; *Brooks* v. *United States*, 267 U. S. 432.

1. Petitioner's contentions that the charge as to affiliation permitted the jury to return a verdict of conviction on the basis of pre-affidavit evidence alone (Br. 75–76) and that the instruction failed to require the jury to confine its judgment to the accused's conception of affiliation (Br. 76) parallel his similar arguments with respect to the charge as to membership. Accordingly they must be rejected for the same reasons (*supra*, pp. 51–53, 54–55).

2. Petitioner's principal attack on the charge as to affiliation (Br. 71–75) is that it did not foreclose conviction on the basis of proof of affiliation with the Party for such of its purposes as may have been wholly lawful. He relies on the decision of this Court in *Bridges* v. *Wixon*, 326 U. S. 135. There the Court held that proof of affiliation, as used in then 8 U. S. C. 137, which provided for the deportation of aliens who are members of or affiliated with any organization that advocates the overthrow by force or violence of the Government of the United States, must show adherence to the unlawful activities of the Party, and that proof of cooperation with respect to activities not themselves unlawful was insufficient to invoke the provisions of the statute.

The *Bridges* case is clearly distinguishable.[43] The statute involved there was expressly operative only

[43] Petitioner relies also upon *Fisher* v. *United States*, 231 F. 2d 99 (C. A. 9). In *Fisher*, the trial court charged that "affiliated" as used in § 9 (h), when applied to the Communist Party has no unusual or different meaning from its normal usage, and defined the term as meaning "To connect or associate one's self with; to

in the event of proof of affiliation with an organization advocating forcible overthrow of the Government. In the instant case, by contrast, it is affiliation on the part of the union officer with the Communist Party, as such, to which the statute has reference, regardless of the revolutionary purposes of the organization. Congress wanted to help sterilize the Party's influence in the labor field, and it was irrelevant to that purpose whether the affiliated union leader agreed with or accepted the Party's objective of violence."[44] See *American Communications Association* v. *Douds*, *supra*, at 393. It may further be noted that it is not affiliation with the Communist Party which is made unlawful by the statute; nothing in the Labor Act makes such affiliation a crime. Petitioner has not been convicted of affiliating with the Party; he has rather been convicted of falsely swearing that he was

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adopt, hence usually to bring or receive into close connection; to ally" (231 F. 2d at 106). Although holding that this definition did not square with the definition of affiliation in the *Bridges* case, *supra*, the Ninth Circuit did not itself rule as to the correct definition of affiliation for the purposes of § 9 (h). Rather, it said equivocally (231 F. 2d at 108): "If the test of affiliation given in that case [*Bridges* v. *Wixson*] is still applicable, and unless the Government can distinguish the case, this instruction is erroneous." As noted in the text above, we submit that the *Bridges* case is distinguishable in that for the purpose of the particular deportation statute affiliation is adherence to the "unlawful objectives" of the Party, whereas the Labor Act constitutionally provides that the services of the Labor Board are not available to unions whose officers are "affiliated" with the Communist Party for *any* purpose.

[44] Similarly, *Galvan* v. *Press*, 347 U. S. 522, deals with a deportation statute which is concerned with membership in the Communist Party, as such, regardless of knowledge of, or agreement with, its revolutionary aim.

not so affiliated. In the context of this statute, unlike the situation in *Bridges,* the question of affiliation with the Communist Party is separate and distinct from the nature of the objectives of the Party. All that is involved is the close and intimate connection with the Party which "affiliation" connotes.

3. It is urged also (Br. 70–71) that the court's instruction on affiliation was contradictory and confusing because the dictionary definition of the verb "affiliate" comprehends relationships broad enough to include that which exists between an organization and one of its members. Since, however, language must necessarily be understood in context, and since the court immediately qualified the dictionary definition with the statement that affiliation as used in Section 9 (h) imports less than membership but more than sympathy" (*Bridges* v. *Wixon, supra,* at 143), the instruction was sufficiently clear to enable the jury to separate the issues under Counts One and Two. Compare *Fisher* v. *United States, supra.*[45]

III

THE JURY WAS PROPERLY CHARGED ON THE ISSUE OF THE CREDIBILITY OF INFORMANTS

Petitioner additionally contends (Br. 77–87) that the trial court did not properly instruct the jury with

[45] It is significant that in *Fisher*, unlike here, the instruction to the jury on affiliation, other than stating the dictionary definition (see *supra*, note 43), did not contain this qualifying statement given above. In holding the instruction to be error, the principal concern of the Ninth Circuit was that one who was only in sympathy with the Party might be convicted of affiliation under that charge (see 231 F. 2d at 107–108).

respect to the credibility to be accorded the Government witnesses who had posed as Communist Party members while in the employ of the F. B. I.

For centuries, governments have considered it necessary to use informants to cope with a number of crimes. Among such crimes are smuggling, bootlegging, narcotics, espionage, and treason. See, *e. g.*, *United States* v. *Rosenberg,* 195 F. 2d 583, 595 (C. A. 2), certiorari denied, 344 U. S. 838. Courts in this country have long adhered to the policy which allows the Government to use otherwise relevant evidence supplied by informants. *Caminetti* v. *United States,* 242 U. S. 470, 495–496; *United States* v. *Dennis,* 183 F. 2d 201, 224–225 (C. A. 2), affirmed, 341 U. S. 494. The use of informants involves solely an issue of credibility.

In this connection, the trial judge instructed the jury as follows (R. 418):

> The witnesses, Jerry W. Ford and Harvey M. Matusow, have testified that for a period of time they received money for services and expenses in furnishing information to the Federal Bureau of Investigation, and you may consider that circumstance when you pass upon the weight and credit which you give them as witnesses, but you are the sole judges of the credibility to be given their testimony. You may take into consideration all the facts and circumstances in determining what weight you shall give their testimony and you are the sole judges thereof.

This instruction clearly informed the jury that Ford and Matusow had received money for services and

expenses while furnishing information to the F. B. I., and that the jury should consider this fact in determining the weight to be accorded their testimony.

Petitioner, however, complains of the trial court's refusal to adopt the precise language of his requested instruction. This instruction (R. 460) would have warned the jury that "If you find that any of the witnesses were employed for money to serve as informers and to make reports as informers to the F. B. I., you should approach their testimony with caution and [weigh] it with great care." It is well settled, of course, that a trial judge is not obliged to adopt the exact language of the instructions requested. *Holt* v. *United States,* 218 U. S. 245, 253; *Sugarman* v. *United States,* 249 U. S. 182, 185. All that is required is that the charge be accurate and that it give to the jury what it needs to reach a verdict. *Wright* v. *United States,* 175 F. 2d 384 (C. A. 8), certiorari denied, 338 U. S. 873. In fact, "[i]t is never 'an absolute necessity' to caution the jury as to the use they may make of informers' testimony." *United States* v. *Dennis, supra,* 183 F. 2d at 225.

Petitioner has erroneously supposed (Pet. 42; Br. 81–82) that *Fletcher* v. *United States,* 158 F. 2d 321 (C. A. D. C.), undertook to lay down an invariable verbal formula to be included in instructions to the jury in cases where informants have testified. *Fletcher* was a narcotics case in which the *sole* evidence against the defendant was the testimony of a single paid addict informant; also, the trial court did not give *any* precautionary instruction concerning informants. The Court of Appeals for the District

of Columbia reversed the conviction, holding merely that instructions should have been given; it did not lay down verbatim instruction to be given in all cases involving informant testimony. By contrast, in this case, in addition to the two informant witnesses with whom this instruction is concerned, six other witnesses gave mutually corrobative testimony as to the activities of petitioner which showed his membership and affiliation with the Communist Party. In addition, the trial court gave adequate instructions concerning the weight to be given to the testimony of informants.

Both Matusow and Ford were subjected to searching cross-examination both on matters relating to the substance of their testimony and on issues of credibility (R. 135–153, 180–198 (Ford); R. 254–295, 303–320 (Matusow)). In a particularly strongly worded argument, petitioner's counsel emphatically urged that the testimony of these two witnesses could not be relied upon because of their character as informants (R. 483–485, 487–491). Under the circumstances, the jury was sufficiently instructed and petitioner was not prejudiced by the instruction given. Once this has been done, it is peculiarly within the competence of the jury which hears the witnesses and observes their demeanor to pass upon the credibility of the witnesses. *Glasser* v. *United States*, 315 U. S. 60, 77; *Collier* v. *United States*, 190 F. 2d 473 (C. A. 6); *Schneider* v. *United States*, 57 F. 2d 454, 457 (C. A. 3); *United States* v. *Levy*, 153 F. 2d 995, 997 (C. A. 3). See *United States* v. *Dennis*, 183 F. 2d 201, 225 (C. A. 2).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the judgment below should be affirmed.

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OCTOBER 1956.

APPENDIX

Summary of Proceedings on Petitioner's Motion For a New Trial

On January 28, 1955, while petitioner's appeal from his conviction was pending in the Court of Appeals, petitioner filed in the District Court a motion for a new trial on the ground of newly discovered evidence. Attached to the motion was an affidavit by Harvey Matusow recanting certain statements he had made in his testimony at the trial. These statements, which Matusow's affidavit asserted were "either false or not entirely true at the time I so testified" (H. 7), are as follows (H. 7–12): (1) the statement (*supra,* p. 10) that petitioner had told him "It is a good idea. We can use more active Communists out here"; (2) the statement (*supra,* p. 11) that petitioner had discussed a plan of Mexican Communist organizers to cut off production for the Korean effort; (3) the statement (*supra,* p. 12) that petitioner in his lecture had urged guests at the ranch to read Communist literature; (4) the statement (*supra,* p. 12) that petitioner had characterized the Association of Mexican-Americans as a key organization as far as Communist activities in New Mexico were concerned. Matusow's affidavit also declared (5) that "There was no basis for my stating that [petitioner] was a member of the Communist Party at the time I stated so in Court" (H. 10), but, as already noted (*supra,* pp. 10, 37), Matusow had never made such a statement at the trial. At the hearing on the motion, Matusow elaborated on these denials (H. 25–56).

The Government produced ten witnesses and eighteen exhibits in opposition to the motion. The evidence adduced by the Government may be summarized as follows:

On October 8, 1952, in Salt Lake City, Utah, Matusow testified under oath before a United States Senate Subcommittee in public session (H. 136–141). Matusow, facing Jencks, who was there as a witness under subpoena and who was also under oath (H. 141–144), repeated the substance of his conversation (R. 245–247) with petitioner at the San Cristobal Valley Ranch in 1950 concerning a Communist plan to call a strike to slow copper production and hinder the Korean effort (H. 144). Petitioner was questioned as to this conversation and asked whether he wished to deny Matusow's testimony. On the advice of his counsel, he refused to answer on the ground that his answer might tend to incriminate him (H. 144–145).[1]

On April 20, 1953, before a grand jury in El Paso, Texas, and again on December 4, 1953, before the Texas Industrial Commission at Austin, Texas, Matusow described this same conversation (H. 583–592).

In the fall of 1953, Matusow prepared an outline for a book to be entitled "Blacklisting Was My Business" (H. 201, 206). The outline (G. Ex. 7, H. 213–219) contained no reference to false testimony.

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[1] At the close of the session of October 8, 1952, Graham Dolan, who was employed by Mine-Mill and who helped to edit the union newspaper, criticized petitioner for having told Matusow anything. Petitioner's reply was: "Well, after all, I was with him at the San Cristobal Valley Ranch * * *. We used to discuss many things * * *. He happened to ask me about the strike. Why the strike. What we intended to do about the strike. I just handed him a line. After all, I had to tell him something. It's nothing to worry about with that phoney. All these hearings, they are not going to prove anything by it anyway." (H. 534.)

During the period from the fall of 1953 to mid-July, 1954, Matusow unsuccessfully attempted to interest various persons and publishing houses to undertake publication of the book (H. 191–248). He testified that he told a number of these people that he had given false testimony under oath (H. 54, 640–642). He named Elmer Davis, the columnist as one such person (H. 54), but retracted this claim on cross-examination (H. 166).[2] He also stated that he had approached Bishop G. Bromley Oxnam. (H. 185–189.) Subsequently, when questioned about his conversation with Bishop Oxnam by the House Un-American Activities Committee in Washington, D. C., on July 12, 1954, Matusow denied ever saying that he had lied under oath (H. 178, 188).

In the summer of 1954, Nathan Witt, attorney for petitioner and general counsel for Mine-Mill, drafted a motion for a new trial for petitioner, and submitted his papers to E. B. Elfers and John McTernan, other attorneys for petitioner (H. 776). It was determined that the motion "wasn't strong enough" and it was abandoned (H. 776–777, 798). On September 13 or 14, 1954, Witt and McTernan conferred in New York City regarding the motion. They agreed that Matusow would be essential to the motion and decided that

[2] To substantiate his recantation, Matusow claimed that a letter which he had written to Senator McCarthy on August 24, 1953, was a confession to the Senator that he had given false testimony (H. 63–65). Actually, the letter reaffirmed the honesty of his relations with the Government (G. Ex. 1, H. 59–61). Matusow likewise claimed that an affidavit (G. Ex. 4, H. 168–172) he gave to the *New York Times* was a retraction of some of his sworn testimony (H. 53). On cross-examination, he admitted that the affidavit was actually a justification and explanation of his estimates concerning that newspaper and reaffirmed his belief that his estimates had been true (H. 168–175).

rather than approach him directly they should aid him in finding someone to publish his book (H. 798).

On or about September 21, 1954, Witt discussed the problem with John Clark, president (H. 434), Orville Larson and Ausbury Howard, vice presidents (H. 435), and Maurice Travis, secretary (H. 435), of the Mine-Mill Union, at a meeting held at the Grand Hotel in Butte, Montana (H. 437, 438, 443–445). These officers authorized Witt to expend $1,000 to assist in the publication of Matusow's book (H. 445, 456–457, 778–780, G. Ex. 18). This method was used because they were afraid the Department of Justice would try to find something wrong in their activities in attempting to get the "truth" from Matusow (H. 799).

Shortly after Witt's return to New York, he had a conference with petitioner and Albert E. Kahn (H. 774, 779). They agreed that Kahn's firm of Cameron and Kahn, Inc., would undertake to publish Matusow's book with money furnished by the Union through Witt (H. 779–780).[3] Witt advanced $200 to $250 to Kahn to defray the expense of locating Matusow (H. 780). Matusow was not aware of any of these arrangements, and Kahn was instructed by Witt not to reveal Witt's connection until the appropriate time (H. 801).[4]

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[3] This is the same Albert E. Kahn who was accused of being a Communist Party member by Matusow in June, 1954 (H. 274).

[4] During this time, Matusow was living in Dallas, Texas, and was reduced to selling programs in the lobby of the Melba Theatre (H. 281). While in Dallas, he received a message from his parents in New York that a Mr. Cameron was trying to locate him (H. 298). In mid-October, he left Dallas on a hiking trip to Salt Lake City. He intended to prospect for uranium with some friends (H. 302–303, 686). At this time, his total financial resources were from $40 to $70 (H. 300). On about October 21, 1954, he arrived in Taos, New Mexico, where he traded his bi-

On October 22, 1954, Matusow told two Mormon missionaries that he had worked against the Communist Party at a dude ranch near Taos, New Mexico (H. 760–761). On the morning of October 23, although he had had no previous contact with Kahn (H. 320), Matusow attempted to place a long distance telephone call from Taos, New Mexico, to Kahn's residence (H. 714, 725). He subsequently contacted Kahn at his office and arranged to be furnished air transportation to New York (H. 326). On the same day, Matusow invited Riley Taintor to have dinner with him. During the dinner Matusow stated that he had received an advance of $1,000 from his publishers and displayed a large roll of bills (H. 736–737). Matusow denied receiving any money while in Taos (H. 686). The following day, Matusow flew from Albuquerque, New Mexico, to New York City. While waiting for his plane in Albuquerque, Matusow remarked to the ticket agent that he was going to New York to write a book, and he commented: "No; they are not interested in the truth but as long as they will pay for it I will write anything" (H. 546–547).

Matusow met Kahn and Cameron in New York City on October 25, 1954, to discuss publication of his book (H. 378). A contract (Govt. Exs. 15 & 16, H. 383–395) for the writing and publication of the book was entered into between Matusow and the firm of Cameron and Kahn the next day (H. 395, 427). It was agreed that Matusow would receive an advance payment of $1500 (H. 390).

The subject matter of the book Matusow had planned to write was dictated into a recording machine (H. 404). Kahn was present and occasionally asked questions to develop the story more fully (H.

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cycle for a room (H. 321). He also borrowed $10 from Doughbelly Price (H. 327).

404–405). In the course of this procedure, Matusow stated to Kahn:

> I knew Jencks was a party member and I said so. I can't say here that Jencks wasn't a Party member after he signed the affidavits because I know that he was * * * [G. Ex. 28; H. 693–694].[5]

During this time, Kahn was in constant communication with Witt and kept him informed of the progress of the project (H. 781). He delivered copies of the typed recordings to Witt at his office as they were completed (H. 781–782). When the recording was completed in mid-December, 1954, Matusow was formally introduced to Witt (H. 406, 783–784). Exactly what occurred between them is not fully covered by the evidence. However, the outcome was that Matusow agreed to make an affidavit on behalf of petitioner (H. 785–788).[6]

Shortly after his interview with Kahn, a chapter of the book concerning the *Jencks* trial was written (H. 784–787). Witt took the draft of this chapter to Denver on January 3, 1955 (H. 787), and it was discussed at a meeting of Mine-Mill officials (H. 793). Witt advised the union officials that he expected Matusow to make an affidavit on petitioner's behalf (H. 793).

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[5] This does not appear in the book as it was finally published (H. 694–700), although in the original draft Matusow again referred to Jencks as a Communist Party member (G. Ex. 23A; H. 682–683).

[6] Following this interview, Matusow was advised by Witt that it would be difficult for the Government to prosecute him for perjury on the basis of contradictory statements. Witt further suggested that the Government would not want to prosecute Matusow because it would affect other cases (H. 352–355).

Thereupon he was instructed to contact Kahn and arrange for a bodyguard to protect Matusow (H. 793–794).

Matusow wrote a draft of his proposed affidavit of recantation on January 17, 1955 (H. 121–126, 790). Witt had previously supplied Kahn with a copy of the record of the case (H. 781–782). The final form of the affidavit was executed on January 20, 1955 (H. 788, 813). The affidavit was filed in the District Court on January 28, 1955 (H. 2, 4). No investigation was undertaken by the union with reference to the reliability of Matusow's recantation (H. 479, 487).[7]

The International Office of the Mine-Mill Union undertook to purchase 7,000 copies of Matusow's book at a cost of $3,250. This figure does not cover the number of copies which the local unions might undertake to purchase (H. 508). In addition, the Canadian branch of the Union promised that they would purchase 5,000 copies (H. 508–509).

On direct examination at the hearing, Matusow stated that he had never told anyone that he had lied in the *Jencks* case before he met Albert E. Kahn, his publisher (H. 272–273).

At the hearing, no evidence was adduced by petitioner in support of the motion other than the testimony of Matusow. Upon due consideration of all the evidence, the trial court denied the motion for a new trial on March 12, 1955 (H. 825–826).

On appeal, the Court of Appeals affirmed (H. 833), holding (a) that the evidence supported the trial

[7] On January 29, 1955, at a Mine-Mill Union Defense Fund Conference in El Paso, Orville Larson, a vice-president of the Union, urged a drive to discredit all Government witnesses in Communist cases (H. 804–805).

court's finding that Matusow testified truthfully at the trial and that his recantation was false (H. 842), and (b) in any event, that "There was ample evidence before the jury at the trial to warrant a conviction without the testimony of Matusow" and "that, upon the whole record, it is manifest that the testimony without Matusow was so convincing that it is difficult to justify the thought that any other result could have been reached if Matusow had not been present as a witness" (H. 844).

U. S. GOVERNMENT PRINTING OFFICE: 1956

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 23

CLINTON E. JENCKS, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

This memorandum is filed at the Court's request in response to questions raised at the oral argument.

1. *What disposition of this case should be made by the Court if it concludes that the trial court erred in denying one or more of petitioner's several motions for production of F. B. I. reports for inspection by the court at the trial or at the hearing on the motion for a new trial?*

In the event that this Court concludes that it was error for the trial court to overrule one or more of petitioner's several motions for production of F. B. I. reports, it does not follow that the proper disposition of the case would be to remand it to the trial court with directions to grant a new trial. Whether a new

trial is required would depend upon the contents of the reports. If the reports in fact contradict in material respects the witnesses' trial testimony or exculpate the petitioner, clearly a new trial is required. If, however, the reports do not contain such contradictory or exculpatory material, no possible prejudice could have resulted from the trial court's denials of the petitioner's several motions to produce.

We believe that the trial court, rather than this Court, is the appropriate tribunal to examine the F. B. I. reports and to determine, in the light of such examination, whether a new trial should be had. The trial court, which has heard and seen all the witnesses and has had the full trial unfold before it, is in the best position to appraise the contents of the F. B. I. reports and their bearing on the trial testimony. Decisions on evidentiary matters are normally the function of trial courts, and in comparable instances this Court has declined itself to make a *de novo* evidentiary inquiry but instead has adopted the practice of remanding to the trial forum for such purpose. See, *e. g., Remmer* v. *United States,* 347 U. S. 227; *Communist Party* v. *Subversive Activities Control Board,* 351 U. S. 115; cf. *United States* v. *Johnson,* 327 U. S. 106. To create an exception for this particular case would establish a troublesome and potentially mischievous precedent. It is probable that the Court's ruling would regularly be pressed, in all types of criminal cases, as authority for appellate courts to pass initially on matters, such as are here involved, which are normally considered appropriate for remand to trial courts.

Nevertheless, if the Court should consider, in view of its supervisory responsibility over the lower federal courts (*Calvaresi* v. *United States*, 348 U. S. 961), that it would prefer to inspect the reports for itself, without remanding to the trial court for that purpose, the Government is filing with the Clerk of this Court, under seal, photostatic copies of the F. B. I. reports requested by the petitioner, so that the Court may make the inquiry for itself, if it is so inclined. Cf. *United States* v. *H. J. K. Theatres Corp. et al.*, decided by the Second Circuit on August 20, 1956 (grand jury minutes, which had not been inspected by the trial court, were inspected by the court of appeals).

2. *Does the Court's action in Mesarosh* v. *United States, decided October 10, 1956, require this Court to order a new trial in the present case?*

As we understand the basic question, it is:—does the fact that an important government witness has under oath recanted his testimony *in itself* cast sufficient doubt on the conviction to call for a new trial and impel this Court to so order? The answer, as given by both federal and state courts[1] over the years, has consistently and emphatically been that a recantation imposes no such duty, but on the contrary requires the trial court to undertake an inquiry into the probable truth or falsity of the recantation. *United States* v. *Troche*, 213 F. 2d, 401, 403 (C. A. 2); *Nilva* v. *United States*, 212 F. 2d 115, 123–124 (C. A. 8), certiorari denied, 348 U. S. 825; *Harrison* v. *United*

[1] The state cases are collected in 33 A. L. R. 550; 74 A. L. R. 757; and 158 A. L. R. 1062

States, 191 F. 2d 874 (C. A. 5);[2] *Gordon* v. *United States,* 178 F. 2d 896 (C. A. 6), certiorari denied, 339 U. S. 935; *Perry* v. *United States,* 39 F. 2d 52, 54–55 (C. A. 5), certiorari denied sub nom. *Capo* v. *United States,* 281 U. S. 769; *Larrison* v. *United States,* 24 F. 2d 82, 87–88 (C. A. 7); *United States* v. *Johnson,* 142 F. 2d 588, 591 (C. A. 7), petition for certiorari dismissed, 323 U. S. 806; *United States* v. *Johnson,* 149 F. 2d 31, 44 (C. A. 7), reversed on other grounds, 327 U. S. 106; *Harrison* v. *United States,* 7 F. 2d 259, 262 (C. A. 2); *United States* v. *Flynn,* 130 F. Supp 412, 421–422 (S. D. N. Y.). And see *Hysler* v. *Florida,* 315 U. S. 411, 413, where the Court noted that failure of a state to give effect to a recantation did not even raise an issue under the due process clause.

The reason for the rejection of any such absolute rule as has been suggested was succintly stated by Judge Seabury in the leading New York case of *People* v. *Shilitano,* 218 N. Y. 161, 169, involving the recantation of three witnesses in a murder trial. In answering the question whether "recantation by wit-

[2] Language by the Fifth Circuit in *Martin* v. *United States,* 17 F. 2d 973, 976 (C. A. 5), certiorari denied, 275 U. S. 527, which suggests a broad rule must be considered in the light of its later opinions cited in the text.

[3] As stated in the *Larrison* case, *supra,* the rule is that when a trial judge is confronted with a recantation by an important Government witness, he should, before granting a motion for a new trial on the basis of the recantation, be "reasonably well satisfied," first, that the recanting witness' *trial* testimony was in fact false; second, that "without it the jury *might* have reached a different conclusion"; and, third, that "the party seeking the new trial was taken by surprise when the false testimony was given and was unable to meet it or did not know of its falsity until after the trial" (24 F. 2d at 87–88).

nesses called on behalf of the People necessarily entitled the defendant to a new trial", the opinion states:

> The question must be answered in the negative, otherwise the power to grant a convicted defendant a new trial rests not with the court but with the witnesses who testified against him upon the trial.

As Judge Seabury suggests, to adopt the proposed rule would be to enable and encourage defendants to join with prosecution witnesses in automatically setting aside a conviction by producing a "recantation". The dangers and potentialities implicit in such a situation need not be elaborated. See the Appendix to the Government's main brief, pp. 64–71.

The full implications of such a holding were so well stated by Judge Cardozo in his concurring opinion in the same case (218 N. Y. at p. 180) that we quote the initial part of his concurring opinion in full:

> Three witnesses for the prosecution have stated under oath to the trial judge that their testimony upon the trial was false. It became his duty to say whether they were conscience-stricken penitents, or criminal conspirators to defeat the ends of justice. He has held them to be conspirators. Unless we can say that he was wrong, and that they were not conspirators, but penitents, we have no right to reverse his order. But I do not see how we can say that he was wrong. I do not understand that even the judges who think this judgment should be reversed, assert that he was wrong. Their view is that, with such a conflict of oaths, he should have abandoned

> the search for truth, and turned it over to a jury. That would have been an easy avenue of escape from a solemn responsibility, but I cannot satisfy myself that along that avenue lay the path of duty. I think it was the duty of the trial judge to try the facts, and determine as best he could where the likelihood of truth lay. That is the very reason why the statute authorizes him to compel the personal appearance of the affiants before him (Code Crim. Pro. § 465, subd. 7; *People* v. *Shilitano,* 215 N. Y. 715). I do not mean that to justify a new trial, he must have been convinced—firmly or with a sense of certainty convinced—that the first story of the witnesses was false and that their new story was true. He might act upon a reasonable probability. But if, on the contrary, he was *convinced* that the second tale was false, that a criminal league had been formed to set at naught the verdict of the jury and the judgment of the court, his duty was clearly marked (*People* v. *Tallmadge,* 114 Cal. 427; *Parker* v. *Hardy,* 24 Pick. 246, 249). He was not at liberty to shift upon the shoulders of another jury his own responsibility. That would have been to make the conspiracy triumph. He was charged with a responsibility to seek the truth himself. [Emphasis added.]

In the instant case, the trial judge, after full hearing, found that Matusow's testimony at the trial was true and his recantation false (H. 818–820). He stated that he was "thoroughly convinced" that the recantation was a deliberate scheme to obstruct justice (H. 820). His decision on the motion for new

trial is entitled to the greatest of weight and should not be overturned unless it is plainly arbitrary and without any support. *United States* v. *Johnson,* 327 U. S. 106. Certainly, the materials collected in the opinion of the Court of Appeals on the new trial motion (H. 833) and in our main brief (see the Statement, pp. 3–14; Appendix, pp. 64–71) show that the trial judge's determination is not so defective that it must be quashed.

Further, we think it appropriate to point out that the petition for certiorari did not seek review of the findings of the trial court denying the motion for a new trial. This is not to say that this Court under its general supervisory powers may not now review those findings, but in the interest of orderly proceedings we submit that a question not raised, briefed, or argued should not be made the basis for reversal except in the most exceptional circumstances.

The situation in *Mesarosh* was wholly different. There had been no hearing before the trial judge, and no such findings had been made as here. The Court apparently concluded, on the basis of the contents of the Solicitor General's motion and his oral presentation, that on remand the district judge could not reasonably come to any conclusion other than that *Mazzei* had more probably than not testified falsely *at the trial,* and that his testimony was important to all of those petitioners. As a result, the Court decided, we believe, that a remand for consideration by the trial court would be useless. In the instant case, there is no such basis for the Court to determine, in the presence posture of the litigation, that Matusow lied *at the trial.* The District Court has

held a full hearing on that precise issue and has decided otherwise. As noted above, his findings are not arbitrary and therefore the Court should not itself order a new trial on the ground of Matusow's recantation, as it did on the basis of the different facts and circumstances in *Mesarosh*. We think the precedent would prove to be an unhappy one. We also do not believe, in view of the long-established and consistent line of authority discussed *supra*, that the Court intended to hold in *Mesarosh* that the recantation of an important trial witness, or proof of a later perjury by such a witness, is of itself enough to compel the granting of a new trial. See also *United States* v. *Johnson*, 327 U. S. 106.

To be sure, the trial judge here found that Matusow's recantation was false, and that his testimony at the post-trial hearing was perjurious. But this finding does not in itself require the conclusion that petitioner is entitled to a new trial. Whenever a recantation is made, it is either true or false. If true, the witness testified falsely at the trial. If false, the witness is testifying falsely in his recantation. In other words, in every case of recantation the witness must have testified falsely at one stage or the other. Hence, to characterize him as a "perjurer" and conclude that a new trial is therefore required would mean a new trial in *every* case where a recantation is proffered. And, as has been noted, the established rule is precisely to the contrary. A recantation marks the beginning, not the end, of the judicial inquiry into the necessity for a new trial.

3. *In the event this Court decides that the trial judge erred in its rulings on production of F. B. I.*

reports, should the Court decide the remaining questions relating to the adequacy of the charge?

By reason of the view which we hold that the proper disposition of this case, if there was error with respect to the reports, is remand for further consideration by the trial judge, we believe that the remaining questions should be decided. If the trial judge determines that a new trial is not warranted, the case will not be disposed of without decision on those questions. If he should decide that a new trial is warranted, there will have to be another charge on the retrial. The Court may therefore wish to give guidance, at this stage, on the issues relating to the charge, in order to avoid possible further appeals and delays. Such guidance will also be useful at other trials in which questions comparable to those raised here may be presented.

Respectfully submitted,

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No. 15157

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

CLINTON E. JENCKS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal From United States District Court for the Western District of Texas, El Paso Division.

PETITION FOR REHEARING.

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TOPICAL INDEX

PAGE

1. This court erred in affirming the refusal of the trial court to require production and inspection by it of those reports to the F. B. I. made by the informers Matusow and Ford dealing with the subject matter of their testimony 1

2. This court erroneously affirmed the trial court's improper charge on the credibility of informers 3

3. This court erred in approving the instructions of the trial court on the issues of membership and affiliation 4

4. The court erred in holding the evidence in this record sufficient to support the conviction of appellant 6

5. This court erroneously affirmed the ruling of the trial court in admitting evidence concerning the filing of the affidavit of October 15, 1949 13

6. This court erroneously affirmed the rulings of the trial court denying appellant a bill of particulars or other specification of the overt acts upon which the government intended to rely to establish the falsity of the affidavit alleged in the indictment 16

7. This court has ignored appellant's point concerning the sufficiency of the evidence and the correctness of the trial court's instructions pertaining to the issue of whether the alleged affidavit was filed in a matter within the jurisdiction of an agency of the United States 18

8. This court has ignored appellant's point pertaining to the improper constitution of the grand jury and the trial jury by reason of the systematic and purposeful exclusion of women 18

TABLE OF AUTHORITIES CITED

CASES

	PAGE
American Communications Assn. v. Douds, 339 U. S. 382, 94 L. Ed. 925	16
American Communications Assn. v. Douds, 339 U. S. 413	10, 13, 17
Bradford v. United States, 129 F. 2d 277	12, 13
Bridges v. Wixon, 326 U. S. 135. 89 L. Ed. 2103	5, 9, 12
Dalton v. United States, 154 Fed. 461	12
Gordon v. United States, 344 U. S. 414	2
Hupman v. United States, 219 F. 2d 243	4, 5, 6, 8, 9
Maggio v. Zietz, 333 U. S. 80	12
Shelton v. United States, 205 F. 2d 806	2
Singer v. United States, 58 F. 2d 74	16
Stevens v. United States, 206 F. 2d 64	16
United States v. Krulewitch, 145 F. 2d 76	2
United States v. Metropolitan etc. Assn., 82 Fed. Supp. 449	16
United States v. Neff, 212 F. 2d 297	16
United States v. Remington, 191 F. 2d 246	17

STATUTES

United States Code Annotated, Title 29, Sec. 159(h)	5

No. 15157

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

CLINTON E. JENCKS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal From United States District Court for the Western District of Texas, El Paso Division.

PETITION FOR REHEARING.

To the Honorable Elbert Parr Tuttle, Ben S. Cameron and Warren L. Jones, Circuit Judges:

Appellant hereby petitions this Honorable Court for a rehearing of the within appeal, and as grounds therefor respectfully shows the following:

1. This Court Erred in Affirming the Refusal of the Trial Court to Require Production and Inspection by It of Those Reports to the F. B. I. Made by the Informers Matusow and Ford Dealing With the Subject Matter of Their Testimony.

(a) From its opinion it appears that this Court totally misconceives the nature of appellant's point and based its affirmance of the trial court upon that misconception.

(1) This Court in its opinion (p. 26) states appellant's point in this language, "Appellant argues at length

that he should have been permitted to explore the Government's file with the hope of turning up inconsistent statements by Government witnesses Ford and Matusow."

(2) Appellant's point is the trial court's denial of his motion for an order directing that the reports of the informers Matusow and Ford to the F.B.I. concerning the events and matters described in their direct testimony be produced to the court for examination and inspection, that inspection be by the court to determine whether the reports had any evidentiary value for purposes of impeachment, and that if they had that value they be made available to the defense for use in cross-examination. [R. 658-659, 897-898.]

(b) Under the decided cases it is not necessary for appellant to have shown to the trial court that these witnesses made reports to the F.B.I. which were in fact inconsistent with their direct testimony. Neither *Gordon v. United States*, 344 U. S. 414, nor any other recent case so holds. The *Gordon* case simply holds that where such inconsistency is included as part of the foundation, it is error to deny production of the report. Other cases, including *United States v. Krulewitch* (C. A. 2), 145 F. 2d 76, hold that it is not necessary to show that inconsistency before production is ordered.

(c) The case of *Shelton v. United States* (C. A. 5), 205 F. 2d 806, does not support the ruling of this Court herein, but is wholly consistent with appellant's position. In that case the trial court ordered production to it of the document requested and inspected it to determine whether it had evidentiary value. Upon finding that it

did not, the trial court refused to make it available to the defendants. That action by the trial court was affirmed by this Court. But here the trial judge refused to inspect the reports at all.

2. This Court Erroneously Affirmed the Trial Court's Improper Charge on the Credibility of Informers.

(a) Appellant has not complained that the trial court failed to adopt the precise language of the charge proffered by appellant below, and appellant's point to this Court is not one of taking "the prosecution to task for its reliance upon the testimony of such witnesses." (Opinion, p. 27.)

(b) Appellant's point to this Court is that the jury was entitled to clear and unequivocal instruction on the standards of credibility established by law for the evaluation, by men of integrity, of such irresponsible and evilly motivated people as those who inform for pay. The trial court's instruction was wholly equivocal and failed to establish any standard at all.

(c) This Court erroneously relieves the Government of all responsibility for selecting informer witnesses. (Opinion p...27.) The Government did in fact select such witnesses when it hired them to spy on their fellow citizens for pay. A citizen cannot be saddled with responsibility for having associated with people whom the Government hired to associate with him in order to inform. The suggestion in the Court's opinion that appellant "chose" to associate with Matusow when appellant fortuitously met him at a vacation resort, where the latter was operating as a hired spy for the F.B.I., ignores the facts of record. The government chose to resort to

such as Matusow to seek out citizens upon whom he could spy and inform. At the very least the government should suffer the limitations on credibility which its selection of witnesses brings on itself.

3. This Court Erred in Approving the Instructions of the Trial Court on the Issues of Membership and Affiliation.

(a) This Court found the evidence on the issue of membership sufficient to sustain the conviction only on the basis of what it called "the Government's *total proof* that appellant was so connected with the Communist Party." (Opinion, p. 13.) Appellant's principal contention on this phase of the case is that the instructions complained of did not require the jury to base its verdict on the "total proof," but upon any isolated portion thereof, whether it be the testimony of only one witness or only a single incident in the testimony of a witness. The vice of such an instruction is illustrated both by the reliance of this Court upon the "total proof" as well as by the analysis of what the jury could have based its verdict upon as indicated at pages 87-89 of appellant's main brief herein.

(b) While the court in *Hupman v. United States* (C. A. 6), 219 F. 2d 243, states in the final paragraph thereof that it approved the lower court's instructions in that case, and while the instruction concerning membership was closely similar to the one given by the trial court below, the opinion of the court in the *Hupman* case did not give the issue the detailed analysis which spells out the legal reasoning for its conclusion. In fact, but one sentence of that paragraph is devoted to an approval of the instructions. We earnestly submit that

the issues raised by the court's instructions are so serious, affecting as they do the constitutionality of the statute (29 U. S. C. A. sec. 159(h)), as well as the interpretation and application of the statute in the practical work of the National Labor Relations Board, as to require not simply a different conclusion but a careful exposition of the grounds upon which it is reached.

(c) The approval of the trial court's instructions in *Hupman v. United States, supra*, is not authority for this Court's ruling on the instructions concerning affiliation in this case. So far as we can ascertain from an examination of appellant's brief in the *Hupman* case, the trial court there did not give the same instruction concerning affiliation as was given by the trial court below. The *Hupman* opinion is therefore not authority for approval of the affiliation instruction in this case. In any event, the opinion of the Court of Appeals in the *Hupman* case devotes but one paragraph to the instructions and only one sentence to stating its approval of them. The issue posed by the instruction of the trial court below presents so important an issue that it requires not simply a different conclusion but a careful exposition of the grounds upon which it is based.

(d) For all the reasons stated in appellant's main brief (Point Seven), the trial court's instruction on the issue of affiliation was erroneous and directly in conflict with decisions of the Supreme Court cited therein, especially *Bridges v. Wixon*, 326 U. S. 135, 89 L. Ed. 2103.

(e) For all the reasons stated in appellant's main brief (Point Six) the trial court's instructions on the issue of membership were erroneous.

4. The Court Erred in Holding the Evidence in This Record Sufficient to Support the Conviction of Appellant.

(a) The Court misstated the evidence with respect to the testimony of the witness Ford when it stated (Opinion, pp. 6-7) "The security officer of the Party knew of no disciplinary action taken against appellant during 1949 or 1950 or any action to remove appellant as a member of the State Board." In fact, the witness Ford testified that in 1949 no disciplinary action against appellant was ever taken *in appellant's presence.* [R. 276, 277, 282.] In fact the witness also testified that during the period from 1949 up to September, 1950, appellant was not "*replaced* in his position on the State Board" of the Communist Party. [R. 300.] There is a vast distinction between not taking any disciplinary action against a person and not taking disciplinary action against him in his presence. There is a world of difference between not replacing someone and not removing someone from office. The difference between the evidence as it exists in the record and the evidence as stated in the Court's opinion is one which transforms testimony having no evidentiary value into testimony having some evidentiary value. Apparently this erroneous version of the evidence was considered by the Court as part of what it referred to as "the Government's total proof."

(b) The Court also misstates the evidence when it says (Opinion, p. 15) that the proof in this case is "of the same character" as that in the *Hupman* case to the effect that it was "the established policy that Communist Party members active in labor unions should not carry Communist cards, but should be entitled to a special kind of membership in the Party which afforded

the least opportunity for detection." We set out immediately below the only evidence in the entire record dealing with this subject. From this it will be seen that it is in no wise connected with appellant. Moreover, the evidence shows that it was by no means the uniform policy of the Communist Party to do as stated in the above quotation from the Court's opinion.

The first excerpt is from the testimony of the witness Ford [R. 299-300]:

> "Q. Did you carry a Communist Party card from 1949 up to September, 1950? A. No.
>
> Q. Based on your knowledge of security officer and as a member of the State Board, do you know of your own knowledge whether or not the members of the Communist Party during this period carried Party cards?
>
> * * * * * * * *
>
> A. Party members during this period usually did not carry a card.
>
> Mr. McTernan: Excuse me. That is not responsive, and I move to strike it. That is an opinion of his, and a conclusion. It is not a statement of what was done by whom.
>
> The Court: The Court said if he knew, and I assumed that he meant he did know that many of them *did carry cards*. Objection overruled." (Emphasis added.)

The second excerpt is from the testimony of the witness Eckert [R. 914-915].

> "Q. Mr. Eckert, did the Communist Party have different types of membership? A. Yes.
>
> Q. What kind of membership did you go on?
>
> * * * * * * * *

A. My membership in the Communist Party at this time, *in 1947*, was a membership at large. (Emphasis added.)

Q. What did that mean?

Mr. McTernan: Objection.

The Court: Overruled. He was an officer in the Party.

A. Membership at large was a type of membership held in the Communist Party for people occupying strategic and important positions in labor unions and other organizations where public knowledge of their membership to non-Communists would jeopardize their position in the organization."

It is perfectly apparent from an examination of the *Hupman* opinion (219 F. 2d at 247) that the evidence in that case was of an entirely different character. In the *Hupman* case there was testimony that the Party organizer for the state of Ohio told Hupman, "Since you signed this affidavit, the Taft-Hartley affidavit, read the Worker, the literature; don't pay any dues but contribute, support the Party and don't attend any closed meetings." Also the state chairman of the Party made a statement at a meeting at Hupman's home, attended by Hupman, to the effect that "five Communist members would have to sign the Taft-Hartley affidavit, and the same five should not attend any meetings after he had signed it, not pay any dues; just donate every month so much money. He should meet as an individual group which would be called the Taft-Hartley group."

From this it appears that in the *Hupman* case there were specific instructions to Hupman to conceal his membership in the Communist Party following his execution of the affidavit in question, and that Hupman

acknowledged and agreed with them. It was this evidence that the Court in the *Hupman* case referred to in the quotation set out in this Court's opinion at page 15. There is no such evidence in this case. There is nothing connecting appellant with any policy or instruction or conduct designed to conceal membership in the Communist Party before or after signing either the affidavit with which he was charged (April 28, 1950) or the affidavit concerning which there was improperly admitted proof (October 15, 1949). This record therefore provides no basis arising out of a practice of studied concealment on Jencks' part for indulging a presumption or inference of a continuation of appellant's asserted pre-affidavit connection with the Communist Party.

(c) The Court misconceived the position of appellant when it states (Opinion p. 14) that "appellant does not attempt to deny seriously that there was ample evidence from which the jury was warranted in finding that appellant was an active Communist." It is appellant's position, and it was so stated to the Court upon oral argument, that the only evidence concerning appellant's connection with the Communist Party that should be considered on this appeal was the evidence pertaining to the period prior to the signing of the affidavit dated April 28, 1950. This, because (1) the testimony of Ford concerning disciplinary action against appellant and non-replacement of him has no probative force, (2) the testimony of Terrazas that appellant urged people to read an allegedly communist newspaper is legally insufficient to connect appellant with the Communist Party as a member or affiliate under *Bridges v. Wixon*, 326 U. S. 135, 89 L. Ed. 2103. While the pre-affidavit evidence is

sufficient to show membership as of the time it speaks, it is insufficient to support the conviction because it is dated as of a period from between nine months to four years prior to the execution of the affidavit in question. Such evidence does not establish a rational basis for the operation of the presumption of continuance.

(d) The Court appears to misconceive appellant's contention when it indicates (Opinion, p. 15) that appellant's argument on the sufficiency of the evidence is that the Government's proof must speak as of the very day the affidavit was signed or filed. This is not the appellant's position. He has contended throughout that the evidence to prove that appellant knew he was a member of or affiliated with the Party on April 28, 1950, must speak as of "a period extremely close to the critical date." (Appellant's Br. pp. 82-83.) This position is based upon a number of official interpretations of the statute offered to the Congress by responsible executives of the Department of Justice, as well as upon simple logic arising out of the reasoning of the Supreme Court in the *Douds* case, that a union officer who was once a member of the Party may sign the affidavit with impunity so long as he first resigns. When the evidence does not speak as of a period extremely close to the critical date, as in the present case, it is insufficient to sustain the conviction because it cannot rationally support the inference of knowing membership as of the date in question.

(e) Appellant concedes that at various points in this brief he inexactly formulated his argument concerning

the operation of the presumption of continuance. It was not intended by appellant to state that the presumption of continuance "cannot prevail over the presumption of innocence." (Br. p. 68.) Appellant meant to say, and now says, that it is contrary to law and not rational to give effect to the presumption of continuance upon the record here for the reason that membership or affiliation in a volnutary association is a relationship too easily changed by the volition of the subject to assume that appellant, in face of the official anti-Communist policy of his government, the hysteria against Communism in the period in question, and the consequences of a false oath, would have continued this association after the oath was signed. For under these circumstances the proposition that the relation was continued is not the only probable one. It therefore cannot satisfy the requirements of the circumstantial evidence rule. If the time period between the last item of pre-affidavit proof and the date of the affidavit were so short as to bring that proof "extremely close to the critical date," the Court would have been presented with a different problem.

(f) The Court improperly holds the evidence sufficient because of appellant's failure to come forward with evidence to meet the Government's case. We have already pointed out that of the post-affidavit evidence, only Matusow's had any probative force. Of that there were independent witnesses only to the lecture and the conversation with Marcus. The lecture contained nothing to rebut for the testimony elicited only an endorsement of and urging

to read a so-called Communist newspaper. *Bridges v. Wixon, supra,* shows that to be of no value. The substance of the Marcus conversation was repeated in a subsequent private conversation, so that to call Marcus, if available, would have had little effect in rebutting Matusow. Thus only Jencks himself could rebut Matusow.

The cases are clear, including the *Bradford* case, cited in the Court's opinion, that "no presumption against the accused [arises] from his not testifying in his own behalf." (129 F. 2d at 278.)

As to appellant's failure to rebut the pre-affidavit evidence, that evidence is insufficient as a matter of law because of its remoteness to support an inference of membership or affiliation as of April 28, 1950. To require appellant to rebut it or suffer an inference against him is to deny him due process of law. For such a rule makes it possible for the Government to prove past membership and then shift to appellant the burden of disproving current membership. (See Mr. Justice Black, concurring in *Maggio v. Zietz,* 333 U. S. at 80, 81.) Further, the *Bradford* case has no application here. There the accused had been shown to have been involved in illegal transactions. He had a burden to explain his connections with them. Here *all* the pre-affidavit evidence shows appellant in a perfectly legal connection which violated neither law nor his sworn word. He had nothing to explain, for this evidence would not support the inference that he retained the connections after giving his affidavit to the contrary. (See *Dalton v. United States* (C. A. 7), 154 Fed. 461.)

5. This Court Erroneously Affirmed the Ruling of the Trial Court in Admitting Evidence Concerning the Filing of the Affidavit of October 15, 1949.

(a) This Court, upon grounds to be stated below, erroneously held that the evidence concerning the October 1949 affidavit was admissible to prove motive, intent, absence of mistake or accident, or a common scheme or plan. But if the evidence were properly received under this theory the trial court erroneously failed to instruct the jury on the permissible probative effect of the evidence. This Court ignored that portion of appellant's presentation. (See Appellant's Br. p. 50, note 8.)

(b) This Court erroneously defined as the element of "scienter" upon which the Government carried the burden, that appellant knew that it was necessary to file the affidavit in order to obtain for his union benefits and advantages under the National Labor Relations Act. The only *mens rea* which the Government was required to prove was that the affidavit was filed intentionally and that it carried a statement known by appellant to be false. (*A. C. A. v. Douds*, 339 U. S. at 413.) If there was required more than this it would stand proved from the fact of filing for everyone is "presumed to intend the natural and probable consequences" of his acts. (*Bradford v. United States, supra*, p. 277.)

(c) The Court erred in holding (Opinion, p. 22) that the October 1949 affidavit was "a competent and adequate medium for that requisite proof," referring to the proof described in the preceding paragraph. The 1949

affidavit added nothing on this score which was not provided by the 1950 affidavit. On the face of each document was a printed instruction to the effect that the affidavit must be filed "by each officer of a labor organization before that organization may receive the help of the National Labor Relations Board." [G-1, R. 979; G-7, R. 990.] Whatever the necessary proof of *mens rea*, therefore, the 1949 affidavit added nothing on that issue.

(d) The same comment applies to that portion of the Court's opinion (Opinion, p. 23) to the effect that the 1949 affidavit showed a general scheme or plan on the part of appellant to conform to the requirements of Taft-Hartley in order to obtain the benefits of that Act. The 1950 affidavit proved equally as much as the 1949 affidavit did on that score.

(e) The same comment applies to the Court's observation (Opinion, p. 24, note 12) that the filing of the 1949 affidavit showed "that appellant was familiar with the practice actually followed in such matters and the effect of the filing of the affidavit." This was proven by the 1950 affidavit, if it had to be proven, by virtue of the printed instruction already referred to.

(f) The 1949 affidavit was not admissible to meet matters elicited by the defense on cross-examination. (Opinion, p. 21.) The affidavit was identified and offered in the direct testimony of the first witness, the Labor Board clerk. The matters on cross-examination were developed much later in the case. Moreover, those matters did not go to show "that appellant must not have executed the affidavit" because of the union's policy of non-compliance. They showed, and were used to show (see our Op. Br.

p. 530), that the assertedly "Communist meetings" described by the witnesses were rather gatherings of union personnel discussing union problems. [See R. 524-530, 545-546.] Similarly, the cross-examination of Ford concerning the "closed Communist meetings" were shown to be gatherings of persons active in the Progressive Party discussing activities and policies of that organization. [R. 345, 351-352, 357-358, 365-366.]

(g) The Court in its treatment of this aspect of the case ignored appellant's point that under the cases it is impermissible to accumulate earlier occasions of filing the same statement where there was no added element of proof of knowing falsity in the earlier incidents. (See Appellant's Op. Br. pp. 31-34.)

(h) In its decision the Court ignored those portions of the record alluded to in appellant's brief wherein the prosecutor combined the proof of the 1949 affidavit together with the quotation from the union newspaper concerning the "phony affidavits" in order to charge the appellant with falsity in 1949 and to make that falsity the turning point of the case.

(i) In its opinion the Court ignored the prejudicial effect of the 1949 affidavit when combined with the quantitatively overwhelming mass of evidence dealing with appellant's purported connection with the Communist Party in the period prior to the date of that affidavit, said evidence having a greater probative value in connection with the alleged falsity of that affidavit than in connection with the alleged falsity of the 1950 affidavit.

6. This Court Erroneously Affirmed the Rulings of the Trial Court Denying Appellant a Bill of Particulars or Other Specification of the Overt Acts Upon Which the Government Intended to Rely to Establish the Falsity of the Affidavit Alleged in the Indictment.

(a) The Court misconceives the nature of appellant's requests to the trial court when it described them as asking for "particulars . . . related to the details of the evidence which the Government is seldom required to divulge." (Opinion, p. 25.) The only particulars requested by appellant were those related to the overt act or acts upon which the Government proposed to prove that defendant knew that he was a member of or affiliated with the Communist Party on April 28, 1951. [R. 15, 16, 71.]

(b) The particulars requested by appellant below were the kind of particulars upon which, under the opinion of the Supreme Court in *American Communications Assn. v. Douds*, 339 U. S. 382, 94 L. Ed. 925, the Government had to prove its case.

(c) Rather than being particulars which "the Government is seldom required to divulge," these particulars were a kind which in other criminal cases, including cases under the statute here involved, the Government is required to give. In cases where the indictment is laid only in the general statutory language and is to be proven by one or a series of acts or transactions, sound discretion requires granting the bill. (*Singer v. United States* (C. A. 3), 58 F. 2d 74, 76; *Stevens v. United States* (C. A. 6), 206 F. 2d 64; *United States v. Neff* (C. A. 3), 212 F. 2d 297; *United States v. Metropolitan etc. Assn.*, 82 Fed. Supp. 449, 455.)

(d) It was error to affirm the denial of the bill of particulars on the ground that appellant had failed in the trial court "to show any cause for the requested order." Cause existed as a matter of law. Under the *Douds* case, *supra,* the alleged falsity could have been proven only by a series of overt acts. The cases cited above stand for the proposition that where the charge and proof is of such a nature particulars are to be supplied to the defendant so as to permit him a reasonable opportunity to prepare his defense. This has been specifically applied in perjury where the issues as to falsity are substantially the same as under the statute here involved. (*United States v. Remington* (C. A. 2), 191 F. 2d 246, 249.)

(e) The failure of the appellant to attempt to meet the Government's evidence by adducing his own evidence in the trial court cannot serve as a reason for affirming the denial of the bill of particulars. In the first place, the bill of particulars was requested concerning the proof of falsity, not with reference to the filing or execution of the affidavit. The Court's reference to the appellant's failure to offer evidence on the filing issue is therefore utterly irrelevant to the determination of the question here presented. The appellant's failure to offer evidence on the overt acts related to alleged falsity, particularly in light of the times and geographic scope of the Government's proof in this regard, reasonably supports only the inference that he was so deprived of an opportunity to prepare his defense that he was unable to offer evidence to meet the Government's case in this regard.

7. **This Court Has Ignored Appellant's Point Concerning the Sufficiency of the Evidence and the Correctness of the Trial Court's Instructions Pertaining to the Issue of Whether the Alleged Affidavit Was Filed in a Matter Within the Jurisdiction of an Agency of the United States.**

8. **This Court Has Ignored Appellant's Point Pertaining to the Improper Constitution of the Grand Jury and the Trial Jury by Reason of the Systematic and Purposeful Exclusion of Women.**

Respectfully submitted,

E. B. ELFERS,

JOHN T. MCTERNAN,

Attorneys for Appellant.

Certificate of Counsel.

E. B. Elfers and John T. McTernan, attorneys for appellant, hereby certify that in their opinion the above Petition for Rehearing is well-founded and is not interposed for purposes of delay.

E. B. ELFERS,

JOHN T. MCTERNAN.

APPENDIX.

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 15557

CLINTON E. JENCKS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal From the Judgment of the United States District Court for the Western District of Texas Denying Motion for New Trial.

(October 26, 1955.)

Before TUTTLE, CAMERON and JONES, Circuit Judges.

CAMERON, Circuit Judge: (1) This opinion supplements that filed in the case under No. 15,157 wherein the judgment of conviction entered January 21, 1954, was affirmed. On January 28, 1955, while the appeal from that conviction was pending, appellant filed a motion for a new trial based upon newly discovered evidence. The

motion for new trial was denied by the court below after an extended hearing, its order being entered March 12, 1955. The motion was based upon the ground that Harvey Matusow, a witness who had testified at the trial, had recanted portions of the testimony he had given and the motion was supported by an affidavit executed by Matusow in New York on January 20, 1955.

At the hearing[1] appellant relied upon the affidavit of Matusow and the oral testimony given by him as appellant's witness. The Government produced and examined ten witnesses along with a large number of exhibits. At the conclusion of the hearing the court below announced that an order would be entered denying the motion, and thereupon called Matusow before it and spoke these words to him:

> "* * * after listening attentively to your testimony and the other testimony and proceedings on this motion, I am thoroughly convinced that you are in contempt of this court in that you, alone or in conjunction with others, deliberately and maliciously and designedly schemed to obstruct justice in this court, and in furtherance thereof have caused the filing of the affidavit in this cause and thereby obtained the hearing in this court on the motion for a new trial which has just been concluded. *By recanting your former testimony, given in this court, which I believe in substance was true,* you have, in my opinion, deliberately, designedly and maliciously at-

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[1]The trial which resulted in the conviction and sentencing of appellant (No. 15,157) will be referred to as "the trial" and the hearing on the motion for a new trial (No. 15,557) will be referred to as "the hearing".

> tempted to obstruct the justice of this court * * * I am convinced from your actions, conduct and testimony had and done in my presence during this hearing, that you have deliberately and maliciously obstructed the justice of this court and contempted this court *for the purpose of furthering your personal gains.* * * *" (Emphasis supplied.)

From this statement and from the record as a whole it is manifest that the trial judge, who had sat also through the main trial, was convinced that the testimony given by Matusow at the trial was substantially true and that the testimony given on the hearing of the motion for new trial was corruptly false. The question before us is whether we should set aside those findings.

(2) Recent decisions of the Supreme Court and of this court furnish a clear blueprint of the law which shall guide us in passing upon this motion. In *United States v. Johnson*[2] the Supreme Court granted certiorari to the Court of Appeals for the Seventh Circuit, "Since we think it important for the orderly administration of criminal justice that findings on conflicting evidence by trial courts on motions for new trial based on newly discovered evidence remain undisturbed except for most extraordinary circumstances * * *."

The Court of Appeals[3] had first affirmed the District Court's action in that case in overruling a motion for new trial based on newly discovered evidence and later[4] had

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[2]1946, 327 U. S. 106.

[3]142 F. 2d 588.

[4]149 F. 2d 31.

reversed the order of the District Court overruling an amended motion based upon additional evidence that the chief prosecuting witness had committed perjury.[5] The Supreme Court felt that the case before the Court of Appeals was so lacking in merit that the appeal should have been dismissed (Pp. 111-3):

> "The crucial question before the trial court was one of fact: did the new evidence show that Goldstein's original testimony was false? The trial judge, after carefully studying all the evidence, found that there was nothing to show perjury on the part of Goldstein, that Goldstein had in fact told the truth and concluded that a new trial was not warranted. The trial court thus answered the above question in the negative. * * * But it is not the province of this court or the Circuit Court of Appeals to review orders granting or denying motions for a new trial when such review is sought on the alleged ground that the trial court made erroneous findings of fact [citing cases]. While the appellate court might intervene when the findings of fact are *wholly unsupported by evidence* [citing cases] it

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[5]In the second hearing the Court of Appeals had reviewed at great length the affidavits offered as establishing the perjury relied upon and, based upon decisions holding that the reviewing court is in as good position as the District Court to make deductions and conclusions from affidavits, had held: "As our opinion discloses, we have reached the conclusion that Goldstein testified falsely at the trial. The conviction which we entertain in this respect is without reservation. In this situation, what is our duty as a reviewing court? Must we lay aside such conviction in deference to a contrary finding by the trial court? To do so is to acknowledge our impotency to correct what otherwise may amount to a gross miscarriage of justice. We are of the view that the fundamental right to a fair trial is not dependent upon a thread of such tenuous nature."

should never do so where it does not clearly appear that the findings are *not supported by any evidence.* * * * We think that even a casual perusal of this record should have revealed to the Circuit Court of Appeals that here nothing more was involved than an effort to upset a trial court's findings of fact." (Emphasis added.)

In *Harrison, et al. v. United States*[6] the situation presented to us was much the same as the one now before us. The recanting witnesses had been "the main prosecuting witness for the Government at appellant's trial." He swore, on the motion for new trial, that the evidence given by him was untrue and that appellants never had any interest in or connection with his activities leading to their conviction. We sustained the action of the District Court in overruling the motion based upon this recantation, using this language:

"It seems now to be settled that the order overruling the motion for new trial is a final order from which an appeal will lie. However, the court cannot substitute its judgment on the facts for that of the trial judge; it has no power to try the facts *de novo;* it can review the record for errors of law only, to determine, among other things, whether the trial judge has abused his discretion * * *.

"The trial judge, from his knowledge of the original trial, from having heard the wit-

[6]191 F. 2d 874, language quoted from 876; and see also Weiss v. United States, 5 Cir., 1941, 120 F. 2d 472, Weiss v. United States, 5 Cir., 1941, 122 F. 2d 675.

> nesses testify and observed their demeanor on the stand, was better qualified than is this court to pass on the affidavits. We do not find that the trial judge abused his discretion in overruling the motion for new trial."

(3) To apply those tests to the facts of this case is to perceive readily that there are no grounds for holding that the court below abused its discretion. The reason for sustaining the trial court's findings here are stronger than they were in either of the cases quoted from. There the court below was construing affidavits only, while here it had the advantage of observing the witness for a number of days as he proceeded to unfold the recantation. In considering the recantation, the trial judge proceeded with a fresh personal knowledge of the issues involved and of the impression made by the witnesses, including the recanter, at the trial and at the hearing, and he also had the "feel of the case" in a measure which can never be imparted by a printed transcript. His vantage point gave him a perspective which we could not hope to attain.

As the evidence on the hearing proceeded the trial court was faced with the duty which confronts all triers of fact—to separate the truth from falsehood and to reach conclusions based upon the weight of the evidence. The prompt and decisive action taken by the District Court and the language used point clearly to the fact that the truth of the matter was perfectly clear to it.

The court below had other grounds than the mere observation of Matusow, as he testified at the trial and at

the hearing, for concluding that Matusow gave testimony which was substantially true at the trial and that the recantation was pure fabrication. "Environment illuminates the meaning of acts, as context does that of words. What a man is up to may be clear from considering his bare acts by themselves; often it is made clear when we know the reciprocity and sequence of his acts with those of others * * *".[7] It was proper for the court below to consider that Matusow had little demonstrable motive for lying at the trial, and the basest of all motives, personal gain, for the recantation. A brief look at that feature of the evidence will be found helpful.

(4) A few months after Matusow had testified at the trial appellant's attorney began activities which culminated in Matusow's affidavit of recantation and his testimony at the hearing. Early in August, 1954—his testimony at the trial had been given in January—the attorney prepared a motion for a new trial upon indirect information he had obtained. Consultation with associate counsel resulted in the conclusion that such an effort then would prove abortive, and a conference of appellant's lawyers was held in New York City on September 13th. Being advised that Matusow had unsuccessfully sought financial assistance in the publication of the book whose outline he had prepared, the lawyers decided to cultivate Matusow by assisting him in the publication of the book. To that end the attorney[8] procured authority from the

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[7]Mr. Justice Jackson in Cramer v. United States, 1945, 325 U. S. 1, 32.

[8]The attorney who carried out the arrangements thus agreed upon was General Counsel for Mine-Mill in addition to being Attorney of Record for Appellant. He also testified at the hearing.

officials of Mine-Mill at a meeting in Butte, Montana to spend the money reasonably necessary to accomplish the publication of Matusow's book, the initial advance being fixed at one thousand dollars. The attorney then went in company with appellant to a publisher whose interest Matusow had theretofore sought to enlist, one Kahn, and made the first advance of money to him with instructions that he track down Matusow and arrange for the writing and publication of the book. The publisher was employed to take full charge of the enterprise but was admonished not to reveal to Matusow the appellant's or the attorney's connection with it.

The publisher located Matusow through his parents and asked him, over long distance telephone, to come to New York to discuss the publication of his projected book and airplane passage was arranged. Although the publisher had never before been advised of the precise type of book contemplated by Matusow, a contract for its publication was entered into between the publisher and Matusow on the day following his arrival. The publisher arranged that Matusow should occupy an apartment in New York City and dictation of the book was begun into a tape-recording machine, the publisher asking questions and Matusow answering them. The publisher maintained contact throughout this period with the officials of Mine-Mill, sometimes approaching them directly, but most often through the attorney. The union and the attorney made advances from time to time aggregating at least $3,250.00, and there is evidence that the union, including the Canadian subsidiary, agreed to purchase a total of eleven thousand five hundred copies

of the book at a cost of nearly Six Thousand Dollars; and the union membership of about eighty thousand became actively engaged in the sale of the book, opening up a wide field of probable income to Matusow.

On October 23rd, when the publisher approached Matusow in New Mexico, the latter had been reduced economically to the low estate of doing menial jobs and calling on his erstwhile friends for small loans in order to eke out a bare existence, finally having to induce an innkeeper to trade him a few nights' lodging for his bicycle on which he was making a tour of that country. There was credible evidence that, on the night of that telephone call, Matusow flashed a roll of bills to a friend with whom he was dining, stating that he had received an advance of One Thousand Dollars from his publisher in addition to a plane ticket to New York.

During the days intervening between his arrival in New York and December 14, 1954, Matusow and the publisher had proceeded with the initial draft of his book. The publisher was in constant touch with the attorney, but Matusow did not know this. The title of the book, whose outline Matusow presented to the publisher upon his arrival, was "Blacklisting Was My Business", and the outline made no mention of appellant or of any false testimony. On December 14th, responding to a question from the publisher as reflected by the transcript of the tape-recording, Matusow dictated:

> "I knew Jencks was a Party member and I said so. I can't say here that Jencks wasn't a Party member after he signed the affidavits because I know that he was. But I

shouldn't have testified. That's the important thing. * * *"

Other statements appear in the same transcript showing that Matusow was beginning to shade his statements about Jencks to some extent, but he was not at that time sufficiently alive to what was expected of him to alter sufficiently the statements he had consistently made in order to suit the desires of those with whom he was dealing. Under these circumstances, the publisher thereupon made known to him the attorney's connection with the enterprise and took Matusow to the attorney's office. As of that moment the tape-recording sessions were abandoned. What transpired at the attorney's office on December 14th is unknown, but Matusow did admit that he received assurance from the atorney that the Government would experience great difficulty in basing any prosecution of him on any recantation he might make, and that prosecution seemed unlikely because of the adverse effect it would have on this and other pending cases.

Matusow immediately set about to construct rapidly a chapter concerning appellant's trial and delivered it to the lawyer, who, on January 9, 1955, submitted it to the Board of Directors of Mine-Mill and upon his return to New York work was begun on the recantation affidavit. Substantially one month after the happenings of December 14, therefore, Matusow produced a draft of this chapter in his book dealing with appellant's membership in the Communist Party, each page of which the attorney required that he sign. The spontaneous statement of

December 14th above quoted had been transformed to read in part as follows:

> "Jencks was not alone. Others have been indicted for the same charge. Accused of being members of the Communist Party after they had signed the Non-Communist Affidavit of the Taft-Hartley. Jencks could have been a Communist Party member, yes. I had no way of knowing it. And I didn't care. Jencks had been a Communist Party member and I presumed he had submitted his resignation as others had done prior to his signing the Non-Communist Affidavit. But, to my mind at the time, a piece of paper didn't make him any less a Communist."

Followed promptly Matusow's signature to the affidavit of recantation dated January 20, 1955, and a trip by the publisher to the executive board of Mine-Mill at which he secured approval of a cash payment of Two Thousand Dollars. The title of the book had then been changed to "False Witness". One of the sequels to the publication of the book was a report by one of the Mine-Mill officials most active in its publication to a conference of Mine-Mill Defense Fund, in which he signalled a drive to discredit all government witnesses in Communist prosecutions.

Upon the hearing Matusow gave testimony of a much stronger nature in favor of appellant than had been set forth in his affidavit or in the chapter of his book[9] deal-

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[9]Chapter 16 of *False Witness* entitled "Witness For the Persecution".

ing with this case. Further, he joined in the movement to discredit government witnesses generally by delivering a number of tirades against the Department of Justice and its attorneys, extending his vilification to members of Congress and other government officials. His boldness increased as prospects became brighter for the sale of his book.[10]

(5) The cross-examination of Matusow produced discrepancies between his oral testimony and his affidavit of recantation, and he was contradicted by witnesses introduced by the Government at the hearing, particularly with respect to the events preceding his hurried trip from New Mexico to New York in response to the publisher's telephone call. Among these were two Mormon missionaries whose testimony tended to contradict that of Matusow on vital matters, and the ticket agent at the airport, who stated that Matusow told him he was on the way back to New York to writ a book and "they are not interested in the truth but as long as they will pay money for it I will write anything."

(6) The court below also had before it testimony and statements made by Matusow before and after the trial which supported his trial testimony and discounted his recantation. On three occasions before the trial he had testified under oath to facts which squared in the main with his testimony at the trial: before the Senate Internal Security Sub-committee holding hearings at Salt Lake City October 8, 1952, before the Federal grand jury in

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[10]He made the statement, while on the stand, that he hoped to sell a million copies, it already having appeared in Poland, an Iron-Curtain country, and was being run as a serial by a French Newspaper.

El Paso, Texas on April 20, 1953, and before the Texas Industrial Commission at Austin, Texas on December 4, 1953. Subsequent to the testimony at the trial he swore, on July 12, 1954, before the House Committee on Un-American activities that he had not lied in the testimony given at the trial and on the occasions mentioned above. It is worthy of note that, in the hearing before the Senate Internal Security Sub-Committee, Matusow testified in the presence of appellant that appellant was a Communist Party member, and that his union, the International Union of Mine, Mill and Smelter Workers, was planning to cut off copper production for the Korean War by a strike. Appellant was asked by the Senate Committee if he denied the charges made by Matusow and appellant declined to answer, claiming his constitutional privilege against self-incrimination.

On October 22, 1954, Matusow told a representative of the press that he had never lied under oath, and he made a like statement to representatives of the Department of Justice in October, 1954.

(7) Under these circumstances the court below was justified in finding that Matusow testified truthfully at the trial, and that his recantation was false; in fact it is difficult to perceive how the court could have reached any other conclusion. Appellant relies heavily upon the decision of the District Court of the United States for the Southern District of New York in *United States v. Flynn, et al.*, 130 F. Supp. 412, appeal discontinued Sept. 14, 1955 on stipulation. That court rendered a lengthy opinion which we have read with care. We are not called upon

to pass on the decision of the fact-finder in that case. The facts attending that trial and those adduced at the hearing of the motion for a new trial were different from those here. Nor was the court faced there with the inducement to a false recantation which stands out so prominently here. The holding of the District Judge there has no tendency to persuade us that we should overturn the decision on the facts made by the District Judge in the case before us. In any event, we are not tempted to succumb to the thesis that there is no truth because the search for it is made difficult or complex by the machinations of evil men.

(8) There is another point of difference between the situations faced respectively by the District Judge in the Flynn case and the court below in this case. In the Flynn case, Matusow's testimony was so vital and uncorroborated with respect to the two defendants granted new trials that the court felt that they would not have been convicted without it. Here the situation was quite different, the testimony of Matusow in most of its fundamental aspects being merely cumulative, and the facts being established by credible testimony from other witnesses. What he said concerning appellant's activities in the National Association of Mexican-Americans, commonly referred to as ANMA, furnishes a good illustration. Matusow's testimony at the trial had connected appellant with that organization of Mexican and American miners and had characterized the organization as Communist dominated. By degrees Matusow recanted the substance of that testimony. But other witnesses established the same facts to which Matusow had testified, and

which he sought to recant. Witnesses Ford and Petersen established definitely that ANMA had long been an important concentration point in the work of the Communist Party in New Mexico. Ford and Terrazas corroborated Matusow's partly recanted testimony of appellant's admitted activity in the organization, and no facet of that proof was left without convincing corroboration.

Other witnesses gave in detail the names of persons participating in the activities Matusow attributed to appellant, and none of these were used by appellant at the trial or on the hearing to challenge or refute any of this testimony. In most instances others were present when appellant made the statements ascribed to him by Matusow; and the testimony given by Matusow as to conversations between him and appellant alone dealt with situations covered by testimony of other witnesses. The burden was on appellant to bring forward witnesses to refute the otherwise undisputed testimony or at least to give a satisfactory explanation of his failure to do so.

There was ample evidence before the jury at the trial to warrant a conviction without the testimony of Matusow. We hold that, upon the whole record, it is manifest that the testimony without Matusow was so convincing that it is difficult to justify the thought that any other result could have been reached if Matusow had not been present as a witness.

(9) Appellant repeats the argument that the court below erred in refusing to require that the F.B.I. reports be brought before it, the complaint this time being based

largely upon the refusal of the judge to require disclosure of a report written by an agent after Matusow had expressed a desire not to testify in any future hearing of the prosecution against appellant. The request with which we are dealing was raised after Matusow had stated that he had indicated to the F.B.I. agent that his testimony was not honest.[11] That request made by appellant's attorney was not made when the testimony was given but quite a bit later. When the quoted testimony was brought out, Matusow was under cross-examination about divorce proceedings between him and his wife.

The agent gave quite a different version of what Matusow said to him.[12] The situation facing the judge

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[11]He made two statements while under cross-examination, the former being: "I told the F.B.I. agent I didn't want to testify in the Jencks trial. I didn't feel my testimony was honest. Or, in substance, that is what I told him—I didn't want to ever testify and especially in the Jencks trial that was coming up." A little later on the same subject he stated:

> "I told the agent and he made a written notation of what I was saying about the Jencks case and I asked him if he would forward that information to Washington or to whoever was in charge of the Jencks case to inform them I didn't want to be a witness in that case. That is how it happened and he took it down and asked me to look at his note. I looked at his notes and said, 'Yes'."

[12]"Mr. Matusow came into the resident agency * * * and indicated he was about to accept work at a radio station, KTRC, and that he had been having marital trouble, that he was in Santa Fe at that time with his divorced wife with the anticipation of marrying again, bringing about a reconciliation. He said he would like to be spared the necessity of testifying again, because the publicity that he had received seemed to work against his marital relations, he ascribed it to the publicity, and he desired that officials of the Government be notified that he would like to be spared the necessity of testifying again."

When asked whether Matusow indicated that he was not being honest in any of the testimony or that he had given any false testimony at any time or place, the agent answered categorically,

at the hearing does not come within the holding of the Supreme Court in the case relied upon, *Gordon, et al. v. United States*, 344 U. S. 414. There appellant's conviction rested upon the testimony of one witness alone, an accomplice who had entered a plea of guilty, and his sentence had been deferred by the trial judge, who stated to the witness that he should tell the Government officers all that he knew with the obvious expectation that he might receive a "recommendation for a lenient sentence or for probation." Moreover, it was established without contradiction that the witness had given the F.B.I. a statement in direct contradiction to the one he was then making. On the basis of rejection of the request for that statement, plus the error committed by the judge while deferring the sentence, the Supreme Court held that a conviction should be reversed. By the basis of the holding on this phase of the case is thus stated by the Supreme Court: "By proper cross-examination, defense counsel laid a foundation for his demand by showing that the documents were in existence, were in possession of the Government, were made by the Government's witness under examination, were contradictory of his present testimony, and that the contradiction was as to relevant, important and material matters which directly bore on the main issue being tried." (P. 418.)

The situation with which the court below was dealing was not like the one described in this quotation. The

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"He did, at no time, indicate to me that he had testified falsely or dishonestly."

Moreover, other testimony given by Matusow gave substance to the assumption that, what he meant when he stated to the agent that he did not feel that his testimony was honest, was that it was not honest for him to associate intimately with appellant and then testify to what transpired between the two.

vague hint of dishonesty was supported only by Matusow's statement, and his testimony was directly contradicted by the F.B.I. agent. The court below was not forced to accept Matusow's statement, but was justified in accepting the contradictory statement of the agent.[13] The point has no more validity here than it had when raised at the trial.

(10) The Government is frequently compelled to look to the criminal element including accomplices for its witnesses. The enforcement of the criminal laws would be rendered impotent if convictions should be set aside merely because one of such witnesses essays to repudiate his testimony when it seems profitable to do so. Particularly is this true here where the recantation was so completely under the sponsorship and tutelage of appellant and his agents. Such a shackeling of law enforcement cannot be tolerated if justice is to be preserved and organized society is to be permitted to compete on equal terms with those who would destroy it.

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[13]Moreover, Matusow's statement was not that of a witness against appellant developed upon cross-examination, but was the statement of appellant's witness seeking to bolster testimony then being given. What we said in Shelton v. United States, 5 Cir., 1953, 205 Fed. 806, 814-5, applying the rule of Gordon v. United States, *supra*, applies here: "Unfortunately for appellant, he does not claim * * * that Reid's statement of May 1, 1952 conflicted with the statement made upon the stand. On the contrary, the record shows that the defendant claimed only that the statement which was in substance the same that Reid was making on the stand was in contradiction of earlier oral statements made by him or his earlier action in not incriminating the defendant * * *."

The action of the court below in denying the motion for a new trial was right and its judgment is

AFFIRMED.

A True Copy:

Teste:

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Clerk of the United States Court of Appeals for the Fifth Circuit.

Judgment.

Extract from the Minutes of October 26, 1955.

No. 15557.

CLINTON E. JENCKS,

vs.

UNITED STATES OF AMERICA.

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Texas, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court denying the motion for a new trial in this cause be, and the same is hereby, affrmed.

No. 15157

IN THE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

CLINTON E. JENCKS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

Appeal From the United States District Court for the Western District of Texas.

(October 26, 1955.)

Before TUTTLE, CAMERON and JONES, Circuit Judges.

CAMERON, Circuit Judge: Appellant was convicted of violating Title 18 U. S. C. A. Sec. 1001 by making false statements to National Labor Relations Board, a government agency. The indictment was in two counts, charging that, on April 28, 1950, he executed N. L. R. B. Form 1081 pursuant to Section 159(h), Title 29 U. S. C. A., same being the Non-Communist Affidavit of a Union

Officer. Count One charged that appellant falsely stated in the affidavit that he was not then a member of the Communist Party, and Count Two that he was not then affiliated with the Communist Party. The jury returned a verdict of guilty on both counts, and he was sentenced to imprisonment for five years on each count, the sentences to run concurrently.

Appellant introduced no witnesses, but assigns a large number of errors of the court below, raising chiefly these questions: whether the evidence was sufficient to establish that appellant caused the affidavit to be filed, and that he was a member of or affiliated with the Communist Party at that time; whether evidence was wrongfully admitted of the filing by appellant of an affidavit six months before the one on which he was prosecuted; and whether the court erred in refusing a bill of particulars and in refusing appellant's request for inspection of certain F.B.I. records, or in failing to caution the jury concerning credibility of informers.

The facts as established by the jury verdict are set forth in the succeeding paragraphs. On April 28, 1950 appellant signed an affidavit on N. L. R. B. Form 1081 entitled, "Affidavit of Non-Communist Union Officer," and swore to it before a notary public, which stated that he was a responsible officer of the union known as Amalgamated Bayard District Union of Mine, Mill, and Smelter Workers, Local 890, International Union of Mine, Mill and Smelter Workers and was not a Communist at the time. This affidavit was received in due course of mail at the Regional Office of the National Labor Relations Board in El Paso, Texas, on May 1st, accompanied by an

undated letter signed by appellant as President of that local union and on its letterhead, stating that he would fill out and return the requisite Labor Organization Registration Form if a copy should be forwarded to him. Under the practices in force, the Board would not extend its facilities to any union not complying with the requirements of the Taft-Hartley Law, which required that the non-Communist affidavit be filed. May 2nd, the Regional Office of N. L. R. B. mailed appellant an acknowledgment of his affidavit (which appellant received) and stated that his union would be considered as in compliance with the filing requirements of the law

The El Paso Regional Office had also received in due course of mail prior documents signed by appellant tending to establish a symmetrical course of dealing obedient to the terms of the Taft-Hartley Law. Among these were a financial report dated December 31, 1948, a certified list of union officers dated October 15, 1949, showing appellant to be president of the union; a Non-Communist Affidavit dated October 15, 1949 identical with that of April 28, 1950 upon which appellant was prosecuted; a certificate dated January 13, 1950 declaring that appellant intended, within ninety days, to re-file with N. L. R. B. financial data required by the Taf-Hartley Law; a financial report dated March 30, 1950; a certificate setting forth the names of the officers of the union of which appellant was president bearing date of April 27, 1950, and a letter of the same date requesting that appellant be sent a certain Taft-Hartley form.

Each of these documents was signed by appellant, was stamped with the rubber stamp of the Regional Office

showing date of receipt, and was a part of the Government files. The Regional Office mailed appellant a letter dated May 2, 1950 acknowledging the foregoing letter of April 27th, and sent appellant a Government form requested by him and giving certain instructions including the direction that registration information must be filed annually.

Subsequent to the April 28, 1950 affidavit upon which the prosecution was based, the Regional Office received, in due course of mail, a complaint upon the regular form provided by N. L. R. B. bearing appellant's signature, and setting forth a charge by appellant's union against one of the employers having a contract with appellant's union. This complaint could be recognized and handled by N. L. R. B. only after due filing of a Non-Communist Affidavit covering the year in which it was filed.

Plaintiff published in a paper put out by his local union in October, 1949 a statement, over the names of himself as President and the other local union officers, headed, "What The Next C.I.O. Convention Means To Our Union." This stated that appellant's union had suffered greatly from attacks of other unions under the Taft-Hartley Act, and that President Murray had threatened to expel appellant's union, among others, and stated, "Now that our Union has signed the phony affidavits we can defend ourselves on a ballot in case of raids. We do not fear attack from that quarter any longer." Prior to the filing of the October, 1949 affidavit referred to in the foregoing newspaper article, appellant's union had followed the policy of refusing to file the Non-Communist Affidavits.

Appellant's connection with the Communist Party was established by the evidence as beginning with April, 1946, at which time he was Chairman of the Denver, Colorado Chapter of American Veterans Committee. He attended a Communist Party meeting at the home of the Colorado Chairman of the Party and urged that there were too many Communist Party members in the Committee of which he was Chairman, and that members should spread themselves into other veterans' organizations. Appellant was employed by the International Union of Mine, Mill and Smelter Workers in connection with the local unions at Silver City and Bayard, New Mexico in 1946, at which time he was identified as a dues-paying Communist Party member. He attended closed Communist Party meetings in 1947 and was appointed member of a committee to bring Mexican-Americans into the Communist Party.

He attended Communist Party meetings in 1948, and also meetings at which was determined strategy of elements of labor unions under fire for Communist activities. It was decided that the Non-Communist affidavits required by the Taft-Hartley Act should not be signed. In August, 1947 appellant attended a meeting of the Communist Party Steering Committee and participated in discussing ways and means by which appellant's union could be used to carry out policies of the Communist Party. In August, 1948 appellant attended a meeting of Communists at the home of the New Mexico Chairman, at which appellant outlined his plans as a candiate for Congress on the Progressive Party ticket. Early in 1949 appellant was appointed head of the Southern Section of the Communist Party in New Mexico, and at a Com-

munist Party meeting in April, 1949 appellant was designated as the head of the Communist Party Labor activities. Appellant accepted the designation and stated that he would use his energies to insure labor support, including greater financial support, to the Communist Party.

In May, 1949 he attended a Communist Party meeting in the home of its leader in New Mexico, reporting that he was having success in recruiting Communist Party members from the ranks of Labor, and promised that his union newspaper would support causes of concern to the Communist Party. He identified as his assistant in this work the notary who took both his affidavits as a Non-Communist Union Officer. At a meeting of the Communist Party in 1949, appellant and others made plans for the forthcoming meeting of the Mexican-American Association in Albuquerque, New Mexico, and all present were given specific responsibilities in connection with that meeting.

At this meeting in August, 1949, a resolution was defeated which called upon the Mexican-American Association (frequently referred to as ANMA) to disavow Communist support and to condemn any organization that advocated the violent overthrow of the United States Government. Appellant was present at the meeting and his wife led the opposition to this resolution.

It was the policy of Communist Party officers and members not to carry membership cards during 1949 and 1950. Appellant was a member of the State Board of the Communist Party of New Mexico, and the Security Officer

of the Party knew of no disciplinary action taken against appellant during 1949 or 1950 or any action to remove appellant as a member of the State Board.

During 1950, 1951 and 1952 appellant urged the members of his union to read the Daily Peoples World, a Communist newspaper, appellant stating that this paper brought the truth and that other newspapers were controlled by Capitalists. Sometime after July, 1950 appellant told a member of his union, afterwards expelled for his bold non-Communist stand, that he had signed the non-Communist affidavit in 1950. In July, 1950 and at subsequent dates, appellant made statements to Harvey Matusow, a nember of the Communist Party, connecting appellant with activities of the Communist Party, parteiularly among the Mexican-Americans and the members of the union of which appellant was president.

Appellant offered no evidence except a few documents, chief among which were appellant's honorable discharge from the United States Air Force and several citations for bravery and awards of medals for unusual displays of skill and courage in action in the Pacific theater of war. The record of more than one thousand pages contains the evidence of only nine witnesses introduced by the Government, together with the documentary evidence accompanying their testimony. A good portion of the record is taken up by a large number of motions filed by appellant at various stages of the trial and the extensive objections made by him to the testimony as it was being introduced. A great many of these objections are assigned in appellant's Specification of Error, but are not included in the ten points argued by appellant.

We will group those ten points further and discuss them under the general headings: Whether there was sufficient evidence that appellant caused the affidavit mentioned in the indictment to be filed, whether the evidence was sufficient to show that appellant knew that he was, on the date of that affidavit, a member of or affiliated with the Communist Party, and whether those issues were properly submitted to the jury by the court's charge, whether evidence concerning the filing of the non-Communist affidavit of October 15, 1949 was erroneously admitted and whether appellant was prejudiced thereby; and whether the court below committed procedural errors prejudicial to appellant in connection with its rejection of appellant's efforts to force the Government to give him particulars of its contemplated proof, in connection with appellant's efforts to inspect statements of certain witnesses, and other procedural errors relied on by appellant.

(1) Appellant was convicted of violating 18 U. S. C. A. 1001[1] which is incorporated by reference in the Taft-Hartley Act, 29 U. S. C. A. 159(h).[2] The basis of the prosecution was an affidavit the Government charges the

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[1] "*Statements or entries generally:*

"Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both."

[2] "(h) No investigation shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no complaint shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 160 of this title, unless there is on file with the Board an affidavit executed contemporaneously or within the preceding twelve-month period by each officer of such

appellant signed on April 28, 1950, and caused to be filed with the proper office of the National Labor Relations Board.[3] The first point made by appellant is that the

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labor organization and the officers of any national or international labor organization of which it is an affiliate or constituent unit that he is not a member of the Communist Party or affiliated with such party, and that he does not believe in, and is not a member of or supports any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods. The provisions of sections 286, 287, 1001, 1022, and 1023 of Title 18 shall be applicable in respect to such affidavits."

[3]"Form NLRB-1081

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
AFFIDAVIT OF NONCOMMUNIST UNION OFFICER
(See Instructions on reverse)

The undersigned, being duly sworn, deposes and says:

1. I am a responsible officer of the union named below.
2. I am not a member of the Communist Party or affiliated with such party.
3. I do not believe in, and I am not a member of nor do I support any organization that believes in or teaches, the overthrow of the United States Government by force or by any illegal or unconstitutional methods.

Amalgamated Bayard District Union of Mine, Mill & Smelter Workers Local 890
International Union of Mine, Mill and Smelter Workers

(Full name of national or international union of which it is an affiliate or constituent unit)

Signature Clinton E. Jencks
Address Box 98
(Street)
Bayard, New Mexico
(City and State)

(The notary public or other person authorized by law to administer oaths must fill in completely all blank spaces below.)

Subscribed and sworn to before me this 28th day of April, 1950.

A notary public or other person authorized by law to administer oaths in and for the county of Grant, State of New Mexico

My commission expires March 17, 1952

Arthur Flores
(Signature)

[SEAL]

WARNING.—The attention of persons filing this form with the Board is directed to Section 35(A) of the criminal code,

evidence fails to show that he caused this affidavit to be filed. He does not argue that he did not sign the affidavit, and the proof is without dispute that he did sign it.

The essence of the offense charged by the Government is the filing of the affidavit and the burden rested on it to prove that appellant filed the affidavit or caused it to be filed. The Government amply sustained that burden, the circumstances showing clearly that appellant caused it to be filed. A review of a few of those circumstances will demonstrate this.

Appellant was the president and chief moving force of his union, and his was the duty of taking the steps necessary to comply with Taft-Hartley if the union decided to avail itself of the benefits of that Act. Initially appellant had led the union in a policy of non-compliance. The result was that complying unions were making heavy raids upon the membership of his union, and the higher union officials were threatening expulsion. In October, 1949 appellant had published a statement that all of those complications had been eliminated by the execution of the non-Communist affidavit.[4] At that same time appellant had certified to N. L. R. B. the names of the officers of his union, including his own as President, had certified that his union had filed its financial report with the Secretary of Labor for the preceding year, and had given copies of

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which provides that any person willfully making or causing to be made any false or fraudulent statements or representations in any matter within the jurisdiction of the Board shall be fined not more than $10,000 or imprisoned not more than 10 years, or both."

[4]The affidavit referred to was dated October 15, 1949 and will be dealt with later.

the report to its membership, and these documents, together with stampings showing their receipt, had been received through the mail by the Regional Office of N. L. R. B.

January 13, 1950, appellant had signed a Certificate of Intent stating that, within ninety days, his organization intended to refile financial data with the Department of Labor and to take the other steps represented by the documents above listed, and this too was in the N. L. R. B. files bearing proper receipt stampings. April 27, 1950, appellant had signed a certificate setting forth the names of the officers of his union for the ensuing year, including his own name as President and that too was in the N. L. R. B. file with a receipt stamping affixed. A like certificate signed by appellant under date of March 30, 1950 and bearing a similar receipt stamping appeared in the N. L. R. B. file.

The affidavit upon which appellant was tried was received in due course of mail on May 1, 1950, and the receipt stamping of the N. L. R. B. Regional Office appears on the affidavit. It came together with a letter upon the letterhead of appellant's union and signed by him asking that a Labor Organization Registration Form be sent to him, and the receipt stamping showing receipt on May 1, 1950 likewise appears on that letter.

The El Paso Regional Office of N. L. R. B. mailed to appellant a letter dated May 2, 1950 acknowledging the executed affidavit and advising appellant that his "organization will be considered in compliance with the

filing requirements under Section 9(f) and (g) until October 10, 1950, and under Section 9(h) until April 28, 1951 * * *" This important letter was received by appellant and was produced from his file at the trial. Other acknowledgments of some of the documents above mentioned were offered in evidence and, in more than one, appellant was advised that, as the result of the documents he had sent in, his union was in full compliance with the Taft-Hartley Law. October 28, 1950, appellant signed N. L. R. B. Form 501 making a charge against an employer under the Taft-Hartley Law, and this document shows receipt by the El Paso Office and that the union's compliance status was checked by an employee of that office. Sometime after July, 1950, appellant admitted to another officer of his union that he had executed the non-Communist Affidavit in 1950.

The proof of filing of the affidavit here is stronger than that approved in *Hupman v. United States*, 6 Cir., 1955, 219 F. 2d 243, certiorari denied June 6, 1955, 349 U. S. 953, a case upon which appellant relies. We hold that the proof was ample to justify the jury in finding that appellant caused the affidavit upon which he was tried to be filed with the N. L. R. B.[5]

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[5]Appellant cites several cases from this court which are clearly differentiable. In Rolland v. United States, 1953, 200 F. 2d 678, the testimony showed that defendant had nothing to do with handling the accounts and bookkeeping, and there was no testimony to show that he had anything to do with furnishing the document there in question. Williams v. United States, 1932, 55 F. 2d 226, was a mail fraud case where actual lodging in the mail was essential to conviction; the court held that signing of the statement was a circumstance which might be considered to show mailing, but reversed because there were many other methods by which delivery could have been made than by use of the mails. The other cases are equally inapplicable.

(2) Appellant is on no firmer ground in his contentions with respect to the other vital point in the case—that the evidence is insufficient to show that he knew he was a member of or affiliated with the Communist Party on April 28, 1950. The Government's total proof that appellant was so connected with the Communist Party before and after that date was overwhelming. Five witnesses were introduced who were members of the Communist Party prior to the filing of the affidavit, and one who was a member and gave testimony to contacts with appellant after the filing of the affidavit. These included officers in the Communist Party, one being a product of the International Lenin School of Moscow, who was also an officer of the international union to which appellant's local belonged. One was a security officer of the Communist Party during a great portion of the time from 1948 until September, 1950 in New Mexico, the place of appellant's residence and activities. One witness was a member of appellant's local union, and was expelled from it because of his non-Communist stand.

From these witnesses credible testimony was produced from which the jury was warranted in finding that appellant became active soon after his separation from the armed services in the Communist Party's program for infiltration of veterans' organizations, that he was an active member of the Communist Party in the Rocky Mountain region and the southwestern portion of the United States; and that, during 1949, his activity continued at an accelerated pace, during which time he was engaged in active work among the Mexican-Americans in the interest of the Communist Party; and that, before and after the affidavit of April 28, 1950 was filed, he urged

upon the union members that they read the publications of the Communist Party. The proof of his activities subsequent to the date of filing was not as satisfactory as that covering the period before the filing, but the proof was of such a nature that the jury was warranted in accepting it as one of the circumstances from which it could find the basic fact of knowledge by appellant of his connection with the Party on the date of filing.

Appellant does not attempt to deny seriously that there was ample evidence from which the jury was warranted in finding that appellant was an active Communist. The chief emphasis is placed upon the contention that there is a hiatus of about a year from July, 1949 until July, 1950 in the Government's proof of Communist connections. Much of the argument is pitched around the extent to which the presumption of continuance may be indulged to buttress the actual proof of Communist membership and affiliation before the affidavit was filed. The court below did not charge the jury with respect to such a presumption, and we are called upon to consider it only to the extent of deciding whether the proof in the record and the presumption arising from it justified the court below in overruling the motion for acquittal and in submitting this question to the jury.

It is axiomatic that the presumption of innocence attended appellant at every stage of the trial, and that the burden remained upon the Government throughout to prove each element of the crime charged beyond every reasonable doubt. After reading the evidence contained in this large record, we have no doubt that the Government sustained that burden with respect to each count of

the indictment. It is not our duty to weigh the evidence, but to sustain the verdict of the jury if there is substantial evidence, direct or circumstantial, to support it, *Glasser v. United States*, 1942, 315 U. S. 60.

Appellant's contention here is much like that made in *Hupman v. United States, supra,* concerning which the Court of Appeals for the Sixth Circuit there said, 219 F. 2d at p. 248:

> "The appellant's argument seems to be that unless there is direct proof that appellant was a Communist on the very day the affidavit was signed or filed, the proof of violation fails. This impresses us as an absurdity, especially when the evidence shows that the appellant's instructions were to avoid external indication of Communist membership while still maintaining connection with and giving support to the Party."

There is proof here of the same character as that mentioned in this quotation, it being the established policy that Communist Party members active in labor unions should not carry Communist cards, but should be entitled to a special kind of membership in the Party which afforded the least opportunity for detection.

Under the general heading of "Continuance Of Condition Or Fact," American Jurisprudence[6] thus states the applicable rule: "It is well established that when the existence of * * * a state of things is once established by proof, the law presumes that the * * * state of things con-

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[6] 20 Am. Jur., Evidence, Sec. 207, Pages 205-6.

tinues to exist as before, until the contrary is shown, or until a different presumption is raised from the nature of the subject in question. The question as to the presumption of continuance of certain facts or conditions is largely a matter resting within the sound discretion of the trial court, to be decided in the light of the facts and circumstances of the particular case." The Supreme Court,[7] in dealing with a similar subject, presumption of continuance of possession and control, used this language:

> "Under some circumstances it may be permissible, in resolving the unknown from the known, to reach the conclusion of present control from proof of previous possession. Such a process, sometimes characterized as a 'presumption of fact,' is, however, nothing more than a process of reasoning from one fact to another, an argument which infers a fact otherwise doubtful from a fact which is proved. * * *
>
> "In any event, rules of evidence as to inferences from facts are to aid reason, not to override it. * * *
>
> "The latter can be resolved only by the sound sense and good judgment of the trial court * * *."

The principle here under discussion was applied by the Supreme Court[8] in a prosecution for distilling without registration of the still and giving bond. There was no direct proof that the still was not registered. The Court

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[7]Maggio v. Zeitz, 333 U. S. 56, at 65-6, and 67.
[8]Rossi, *et al.* v. United States, 1933, 289 U. S. 89.

of Appeals[9] had affirmed a conviction notwithstanding absence of proof that the still was not registered, and the Supreme Court approved that action using this language, 289 U. S. 91: "The lower federal courts generally have accepted the doctrine that proof of the custody or control of a still for unlawful distillation of alcoholic spirits is enough to give rise to an inference of lack of registration and failure to give bond which the defendant must overcome by proof [citing cases]. The general principle, and we think the correct one, underlying the foregoing decisions is that it is not incumbent on the prosecution to adduce positive evidence to support a negative averment the truth of which is fairly indicated by established circumstances and which if untrue could be readily disproved by the production of documents or other evidence probably within the defendant's possession or control [citing cases]."

We recognized that doctrine and the latter portion of the foregoing quotation in *Colt v. United States*, 5 Cir., 1946, 158 F. 2d 641, 642, but declined to give effect to it in that case because the time element was too great (forty years), and the proof of the fact with respect to which the presumption was invoked was well within the Government's possession. We quoted from American Juris-

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[9]Rossi v. United States, 7 Cir., 1932, 60 F. 2d 955, 956:

"Error is assigned, because of the absence of direct evidence in the record to show that the still was not registered or the bond approved as required by law. There are many circumstances shown in the record from which, unexplained, the court was warranted in finding that there was no registration or bond. The fact of registration and giving bond was peculiarly within the knowledge of the defendants. In view of * * * their failure to make any explanation, the conclusion that they had failed to comply with the statute seems to be a logical one. [Citing cases.]"

prudence the following general rule applying in criminal cases:

> "In criminal cases the law requires that the state shall prove all the essential facts entering into the description of a crime, and where the charge is grounded on a negative proposition or where the negative proposition is an essential element of the crime the burden is on the state to prove the charge. * * * But where a negation is peculiarly within the knowledge of the defendant the burden is on him to establish that fact."[10]

What we said in *Bradford, et al. v. United States,* 5 Cir., 1942, 129 F. 2d 274, 277, in a prosecution for using the mails to defraud, wherein proof of circumstances pointing to defendant's guilt was unexplained, is pertinent here:

> "These salient facts, standing out in the midst of many minor circumstances in evidence, were sufficient to require some contradictory or explanatory testimony (not necessarily by, but) in behalf of Will Bradford, or an inference of guilty knowledge reasonably could be drawn against him by the jury. The presumption of innocence is one of the strongest rebuttable presumptions known to the

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[10]The following cases approve the doctrine of presumption of continuance as applied to criminal cases: United States v. Lesser, 2 Cir., 1933, 66 F. 2d 612, 614; Crapo v. United States, 10 Cir., 1939, 100 F. 2d 996, 1000; United States v. Perlstein, 3 Cir., 1942, 126 F. 2d 789, 798; Jeffra v. United States, 4 Cir., 1948, 169 F. 2d 218, 221; Noell v. United States, 9 Cir., 1950, 183 F. 2d 334, 338. And *cf.* Kotteakos *et al.* v. United States, 1946, 328 U. S. 750, in which the Supreme Court discussed the rationale of appellate review of convictions in criminal cases under Sec. 269 of the Judicial Code as amended (28 U. S. C. A. 391) at pages 757 *et seq.* and 763 *et seq.*

law, but it disappears when a verdict of guilty, supported by substantial evidence, is returned against the defendant.

"One is ordinarily presumed to intend the natural and probable consequences of one's acts. * * * A finding of guilty knowledge may be drawn from all the facts and circumstances in evidence. This is only way scienter can be shown. In this case the circumstantial evidence of guilty knowledge was sufficient to exclude every reasonable hypothesis of the innocence of Will Bradford. Where evidence of scienter has been given, it may be rebutted * * *."

The uncontroverted proof of appellant's membership in any affiliation with the Communist Party over a period of years and of the degree of his devotion to its principles and of the many activities in which he engaged in furtherance of its mission made a strong case against appellant. His extended argument that he might have severed those connections or resigned from the Party for a period in order to avoid risking the penalties of Taft-Hartley is wholly unimpressive, especially in view of his failure to bring forward any evidence at all. If a dedication so complete and conviction so deep and a course of action so possessed of the attributes of permanence were to be interrupted or abandoned, it lay within easy reach of appellant to make proof of it by some of his associates (including his wife) whose names were freely given by the witnesses. We hold that the court below was amply justified in submitting to the jury the question of appellant's knowledge that he was a Communist when the affidavit

was filed, and that the jury's verdict was amply supported by the evidence.

Complaint is made that the court below committed error in its charge to the jury defining membership in an affiliation with the Communist Party and in refusing charges on the subject requested by him. We have carefully considered the extended argument he makes and find it wholly unconvincing. Moreover, a similar attack was made and rejected in the *Hupman* case, *supra*, where the charge was substantially the same as here.

(3) The foregoing disposes of appellant's contentions that the evidence was not sufficient to establish the ingredients of the crime with which he was charged. It remains but to examine his complaint that the court erred in several respects in the mechanics by which the jury verdict was reached. First among those is the contention that the court below committed reversible error in admitting testimony concerning the filing of the affidavit of October 15, 1949. Appellant claims that the introduction of this former affidavit amounted to putting him on trial for a crime for which he was not indicted. But the court made it plain in its charge to the jury that the affidavit for whose filing appellant was being tried was that dated April 28, 1950.

The Government, on the other hand, contends that the evidence concerning the affidavit of October 15, 1949 was admissible under a well recognized exception to the rule that proof of the commission of other crimes is not admissible for the purpose of showing the commission of the

particular crime charged. That exception is thus stated in American Jurisprudence:[11]

> "Evidence of other crimes is always admissible when such evidence tends directly to establish the particular crime, and it is usually competent to prove the motive, the intent, the absence of mistake or accident, a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the others, or the identity of the persons charged with the commission of the crime on trial."

In our view the facts of this case make it a typical one for the application of the doctrine of that exception. Appellant went to great lengths to develop by cross-examination of the Government witnesses that appellant and his union initially followed the definite policy of refusing to execute non-Communist affidavits. This was a plain effort to give color to the argument that appellant must not have executed the affidavit on which the indictment was based because of that established policy. The filing of the questioned affidavit six months before the one charged in the indictment was evidence that the previous policy had been abandoned. Moreover, appellant's mental state was an important element of the crime and the Government had to sustain the charge in the indictment that appellant did "unlawfully and wilfully make, use and cause to be made and used and filed and caused to be filed * * * a false writing * * * knowing the same to contain a false, fictitious and fraudulent statement

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[11]20 Am. Jur., Evidence, Sec. 310, P. 289.

* * *." The gist of the offense was that appellant had committed the overt act of filing the affidavit in order that his union might obtain benefits and advantages which were denied to those whose officers did not file affidavits. The Government carried the burden, therefore, of proving by evidence, direct or circumstantial, that appellant knew that it was necessary to file the affidavit in order to obtain those advantages, and that the filing of the affidavit did actually and as a matter of practice produce the desired benefits and advantages. That showing also was required to embrace proof that appellant intended to obtain those advantages by signing and filing the affidavit.

The affidavit of October, 1949, in connection with other circumstances in evidence and particularly appellant's published statement with respect to it, furnished a competent and adequate medium for that requisite proof.

That statement, sent by appellant to the members of his union, advised them: that Phil Murray, C.I.O. President, was laying plans to "push our union out of the C.I.O." along with other unions threatened with expulsion; that preparations by the United States for a new war were started as soon as one war ended; that Taft-Hartley was putting labor in chains and was fomenting attacks on constitutional rights and civil liberties which was explained by the fact that the country had become war minded, a thing which had happened before in Germany; that some labor leaders felt so close to Wall Street that they decided that war and not peace might be the answer to the problems of American workers, and were committed not to building homes but blowing them

up; that "Our Union" had "plugged for peace" and was threatened with expulsion along with ten others; that C.I.O. unions had been raiding each other, and that appellant's union had suffered greatly from these attacks and that his international union and its officers "have swallowed a lot of guff, a lot of insults; but that is not the point. None of that is important. Now that our union has signed the phony affidavits we can defend ourselves on a ballot in case of raids. We do not fear attack from that quarter any longer."

The affidavit which preceded or was simultaneous with this statement was necessary to make the statement intelligible. Together they showed a departure from the former policy of non-filing and the adoption of the policy of filing, and an accurate comprehension by appellant of the necessity for that change of policy and of the benefits which it was calculated to produce. It would be hard to picture a situation more typical for the application of the quoted exception, or one in which scienter could be established more convincingly.

Moreover, the handwriting expert testified that the same person who signed the October, 1949 affidavit, which appellant referred to in the statement as having been signed, also signed the affidavit on which the indictment was predicated, and the former affidavit was admissible to identify appellant as the signer of the 1950 affidavit, and to show a general scheme or plan on the part of the appellant to conform to the requirements of Taft-Hartley in order to obtain the benefits which were so vital to a

solution of the problems described in the newspaper statement.[12]

The cases relied upon by appellant are not at war with the views here expressed, but sustain them. Both the *Railton* case[13] and the *Hubby* case[14] recognize the rule and the exceptoin which is here applied. *Railton* was reversed because the charge of the court as to the questioned evidence was too broad, and *Hubby* was reversed because "neither system nor intent was an essential element of the offense with which appellant was charged." Both cases referred to our decision in *Weiss v. United States,*[15] in which Judge Holmes reviewed at length the authorities dealing with the rule and the exception and set forth the reasons behind the exception. The reasons which impelled us to approve the receipt of evidence of other transactions there apply with equal force here, and this point is without merit.

(4) It is urged by appellant that the court below deprived him of elemental fairness in refusing to require the Government to particularize with respect to the overt acts upon which it intended to rely in proving that charges in the indictment that appellant was a member

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[12]The 1949 affidavit was also admissible as tending to show that appellant was familiar with the practice actually followed in such matters and the effect of the filing of the affidavit. It had on it printed instructions (see Note 3 *supra*) showing that, before a union could receive the help of N.L.R.B., each of its officers must file such an affidavit and the National Organization must file its affidavits in the Washington office, and that new affidavits must be filed each year.

[13]5 Cir., 1942, 127 F. 2d 691, 692.

[14]5 Cir., 1945, 150 F. 2d 165, 167-8.

[15]5 Cir., 1941, 122 F. 2d 675; and see also Boyer v. United States, Ct. App. D. C., 132 F. 2d 12; and Lloyd v. United States, 5 Cir., No. 15,207, . . . F. 2d. . . .

of or affiliated with the Communist Party. The court below overruled his motion for bill of particulars repeated by oral request during the opening statement of the Government. A bill of particulars is ordered only for cause, Rule 7(f) Federal Rules of Criminal Procedure. The motion failed to show any cause for the requested order,[16] and the particulars desired related to the details of the evidence which the Government is seldom required to divulge. The question of whether a bill of particulars will be ordered is one addressed to the discretion of the trial court, *Wong Tai v. United States,* 273 U. S. 77, *Johnson v. United States,* 5 Cir., 1953, 207 F. 2d 314, cert. den. 347 U. S. 938.

Moreover, appellant failed entirely to demonstrate that he was prejudiced in any way by his failure to obtain a bill of particulars.[17] The argument would have more weight if appellant had sought to answer any of the Government's evidence supporting the charges in the indictment of which appellant did have full advance notice. One of the important questions was whether appellant caused the affidavit of April 28, 1950 to be filed. The Government introduced sufficient proof from which the jury could find that appellant did cause the affidavit to be filed. Appellant had possession of the affidavit when he signed it, and had control of all of the employees in his office who had knowledge with respect to whether the

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[16]Appellant filed a memorandum of authorities but made no showing by affidavit or otherwise upon which the court could justly have ordered a bill of particulars.

[17]We said in the Johnson case *supra,* "Furthermore, there is nothing in the record to indicate that appellant was surprised or prejudiced by the action of the court in overruling the motion. The granting or denial of the bill of particulars rests within the sound discretion of the trial court * * *."

affidavit was mailed to the Regional Office of N. L. R. B. Yet appellant produced no witness and introduced no testimony on the subject.[18] This contention has no merit.

(5) Appellant argues at length that he should have been permitted to explore the Government's file with the hope of turning up inconsistent statements by government witnesses Ford and Matusow. Upon a proper showing that the Government has possession of such inconsistent statements and the presence of the other requisite conditions, a person charged with crime would be permitted to examine and use them.[19] But no such showing was made here, and the court below properly refused to require the Government to produce its file or any part of it for inspection. *Cf. Shelton v. United States,* 5 Cir., 1953, 205 F. 2d 806, Petition for certiorari dismissed, 346 U. S. 892.

(6) And we are not impressed by the claim of appellant that the court below, in its charge, did not, as requested by him, warn the jury against acceptance of the testimony of the informers. The court was not bound to adopt the language of the charge requested by appellant, and the charge it did give was in conventional form

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[18]Moreover, appellant had ample warning that some of the witnesses introduced by the Government would testify and the course of the examination showed that his counsel had examined at least one of them on a prior occasion and was familiar with testimony given by him before other governmental bodies. Further, the witnesses told of appellant's Communist activities carried on in the presence of his wife and other close associates. But appellant did not introduce any evidence by any of those patently available witnesses on these vital subjects or attempt to explain their absence, or his failure to use them.

[19]Gordon v. United States, 1953, 344 U. S. 414; Bowman Dairy Co. v. United States, 1951, 341 U. S. 214; Goldman v. United States, 1942, 316 U. S. 129.

and gave appellant adequate protection, and was practically the same charges as that given him in the *Hupman* case, *supra*. Appellant dwells upon his accusation that these informers were "involved in the despicably dirty business of informing for pay," and takes the prosecution to task for its reliance upon the testimony of such witnesses. The answer to that argument is, of course, that the Government has nothing to do with selecting the witnesses. The witnesses against appellant were determined when appellant chose those with whom he would fraternize.

One reading the record of this long case is impressed with the fact that the court below exercised wisdom and patience in seeing that appellant was given a fair trial. The record is more than one thousand pages long and the trial consumed nine or ten days even though there were only nine witnesses. Objections almost without number were made to the testimony of every witness and the court below heard them fully and his rulings were so fair that only one ruling on the admission of evidence is argued as error. The trial court permitted appellant in many instances to interrupt the examination of witnesses by the Government in order to test in advance whether questions which would be propounded by the Government would be proper. In several instances the trial was suspended to give appellant the opportunity to make preparations for cross-examination of witnesses after their direct examinations had been completed. The showing of the Government against the appellant was strong indeed, and the trial was fair and free of error. The jury

found appellant guilty and was amply justified in doing so, and the judgment entered on its verdict is

AFFIRMED.

A True Copy:

Teste:

.....

Clerk of the United States Court of Appeals for the Fifth Circuit.

Judgment.

Extract from the Minutes of October 26, 1955.

No. 15157.

CLINTON E. JENCKS,

vs.

UNITED STATES OF AMERICA,

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Texas, and was argued by counsel.

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

INDEX

	Original	Print
Proceedings in the United States Court of Appeals for the Fifth Circuit	833	833
Opinion, Cameron, J.	834	833
Judgment	853	847
Petition for rehearing (omitted in printing)	855	847
Order denying petition for rehearing	856	847
Motion for and order staying mandate (omitted in printing)	857	
Clerk's certificate (omitted in printing)	860	

[fols. 833-834] IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 15557

CLINTON E. JENCKS, Appellant,

versus

UNITED STATES OF AMERICA, Appellee

Appeal from the Judgment of the United States District Court for the Western District of Texas Denying Motion for New Trial

OPINION OF THE COURT—Filed October 26, 1955

Before TUTTLE, CAMERON and JONES, Circuit Judges

CAMERON, Circuit Judge: (1) This opinion supplements that filed in the case under No. 15,157 wherein the judgment of conviction entered January 21, 1954 was affirmed. On January 28, 1955, while the appeal from that conviction was pending, appellant filed a motion for a new trial based upon newly discovered evidence. The motion for new trial [fol. 835] was denied by the court below after an extended hearing, its order being entered March 12, 1955. The motion was based upon the ground that Harvey Matusow, a witness who had testified at the trial, had recanted portions of the testimony he had given and the motion was supported by an affidavit executed by Matusow in New York on January 20, 1955.

At the hearing[1] appellant relied upon the affidavit of Matusow and the oral testimony given by him as appellant's witness. The Government produced and examined ten witnesses along with a large number of exhibits. At the conclusion of the hearing the court below announced that an order would be entered denying the motion, and

[1] The trial which resulted in the conviction and sentencing of appellant (No. 15,157) will be referred to as "the trial" and the hearing on the motion for a new trial (No. 15,557) will be referred to as "the hearing".

thereupon called Matusow before it and spoke these words to him:

> "* * * after listening attentively to your testimony and the other testimony and proceedings on this motion, I am thoroughly convinced that you are in contempt of this court in that you, alone or in conjunction with others, deliberately and maliciously and designedly schemed to obstruct justice in this court, and in furtherance thereof have caused the filing of the affidavit in this cause and thereby obtained the hearing in this court on the motion for a new trial which has just been concluded. *By recanting your former testimony, given in this court, which I believe in substance was true;* you have, in my opinion, deliberately, designedly [fol. 836] and maliciously attempted to obstruct the justice of this court * * * I am convinced from your actions, conduct and testimony had and done in my presence during this hearing, that you have deliberately and maliciously obstructed the justice of this court and contempted this court *for the purpose of furthering your personal gains.* * * *" (Emphasis supplied.)

From this statement and from the record as a whole it is manifest that the trial judge, who had sat also through the main trial, was convinced that the testimony given by Matusow at the trial was substantially true and that the testimony given on the hearing of the motion for new trial was corruptly false. The question before us is whether we should set aside those findings.

(2) Recent decisions of the Supreme Court and of this court furnish a clear blueprint of the law which shall guide us in passing upon this motion. In *United States v. Johnson*[2] the Supreme Court granted certiorari to the Court of Appeals for the Seventh Circuit, "Since we think it important for the orderly administration of criminal justice that findings on conflicting evidence by trial courts on motions for new trial based on newly discovered evidence

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[2] 1946, 327 U.S. 106.

remain undisturbed except for most extraordinary circumstances * * *".

The Court of Appeals[3] had first affirmed the District Court's action in that case in overruling a motion for new trial based on newly discovered evidence and later[4] had [fol. 837] reversed the order of the District Court overruling an amended motion based upon additional evidence that the chief prosecuting witness had committed perjury.[5] The Supreme Court felt that the case before the Court of Appeals was so lacking in merit that the appeal should have been dismissed: (Pp. 111-3)

> "The crucial question before the trial court was one of fact: did the new evidence show that Goldstein's original testimony was false? The trial judge, after carefully studying all the evidence, found that there was nothing to show perjury on the part of Goldstein, that Goldstein had in fact told the truth and concluded that a new trial was not warranted. The trial court thus answered the above question in the negative. * * * But it is not the province of this court or the Circuit Court of Appeals to review orders granting or denying motions for a new trial when such review is

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[3] 142 F.2d 588.

[4] 149 F.2d 31.

[5] In the second hearing the Court of Appeals had reviewed at great length the affidavits offered as establishing the perjury relied upon and, based upon decisions holding that the reviewing court is in as good position as the District Court to make deductions and conclusions from affidavits, had held: "As our opinion discloses, we have reached the conclusion that Goldstein testified falsely at the trial. The conviction which we entertain in this respect is without reservation. In this situation, what is our duty as a reviewing court? Must we lay aside such conviction in deference to a contrary finding by the trial court? To do so is to acknowledge our impotency to correct what otherwise may amount to a gross miscarriage of justice. We are of the view that the fundamental right to a fair trial is not dependent upon a thread of such tenuous nature."

sought on the alleged ground that the trial court made erroneous findings of fact [citing cases]. While the appellate court might intervene when the findings of fact are *wholly unsupported by evidence* [citing cases] [fol. 838] it should never do so where it does not clearly appear that the findings are *not supported by any evidence*. * * * We think that even a casual perusal of this record should have revealed to the Circuit Court of Appeals that here nothing more was involved than an effort to upset a trial court's findings of fact." (Emphasis added.)

In *Harrison, et al v. United States*[6] the situation presented to us was much the same as the one now before us. The recanting witness had been "the main prosecuting witness for the Government at appellant's trial." He swore, on the motion for new trial, that the evidence given by him was untrue and that appellants never had any interest in or connection with his activities leading to their conviction. We sustained the action of the District Court in overruling the motion based upon this recantation, using this language:

"It seems now to be settled that the order overruling the motion for new trial is a final order from which an appeal will lie. However, the court cannot substitute its judgment on the facts for that of the trial judge; it has no power to try the facts *de novo;* it can review the record for errors of law only, to determine, among other things, whether the trial judge has abused his discretion * * *.

"The trial judge, from his knowledge of the original trial, from having heard the witnesses testify and [fol. 839] observed their demeanor on the stand, was better qualified than is this court to pass on the affidavits. We do not find that the trial judge abused his discretion in overruling the motion for new trial."

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[6] 191 F.2d 874, language quoted from 876; and see also Weiss v. United States, 5 Cir., 1941, 120 F.2d 472, Weiss v. United States, 5 Cir., 1941, 122 F.2d 675.

(3) To apply those tests to the facts of this case is to perceive readily that there are no grounds for holding that the court below abused its discretion. The reason for sustaining the trial court's findings here are stronger than they were in either of the cases quoted from. There the court below was construing affidavits only, while here it had the advantage of observing the witness for a number of days as he proceeded to unfold the recantation. In considering the recantation, the trial judge proceeded with a fresh personal knowledge of the issues involved and of the impression made by the witnesses, including the recanter, at the trial and at the hearing, and he also had the "feel of the case" in a measure which can never be imparted by a printed transcript. His vantage point gave him a perspective which we could not hope to attain.

As the evidence on the hearing proceeded the trial court was faced with the duty which confronts all triers of fact —to separate the truth from falsehood and to reach conclusions based upon the weight of the evidence. The prompt and decisive action taken by the District Court and the language used point clearly to the fact that the truth of the matter was perfectly clear to it.

The court below had other grounds than the mere observation of Matusow, as he testified at the trial and at [fol. 840] the hearing, for concluding that Matusow gave testimony which was substantially true at the trial and that the recantation was pure fabrication. "Environment illuminates the meaning of acts, as context does that of words. What a man is up to may be clear from considering his bare acts by themselves; often it is made clear when we know the reciprocity and sequence of his acts with those of others * * *".[7] It was proper for the court below to consider that Matusow had little demonstrable motive for lying at the trial, and the basest of all motives, personal gain, for the recantation. A brief look at that feature of the evidence will be found helpful.

(4) A few months after Matusow had testified at the trial appellant's attorney began activities which culminated

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[7] Mr. Justice Jackson in Cramer v. United States, 1945, 325 U.S. 1, 32.

in Matusow's affidavit of recantation and his testimony at the hearing. Early in August, 1954—his testimony at the trial had been given in January—the attorney prepared a motion for a new trial upon indirect information he had obtained. Consultation with associate counsel resulted in the conclusion that such an effort then would prove abortive, and a conference of appellant's lawyers was held in New York City on September 13th. Being advised that Matusow had unsuccessfully sought financial assistance in the publication of the book whose outline he had prepared, the lawyers decided to cultivate Matusow by assisting him in the publication of the book. To that end the attorney[8] procured au- [fol. 841] thority from the officials of Mine-Mill at a meeting in Butte, Montana to spend the money reasonably necessary to accomplish the publication of Matusow's book, the initial advance being fixed at one thousand dollars. The attorney then went in company with appellant to a publisher whose interest Matusow had theretofore sought to enlist, one Kahn, and made the first advance of money to him with instructions that he track down Matusow and arrange for the writing and publication of the book. The publisher was employed to take full charge of the enterprise but was admonished not to reveal to Matusow the appellant's or the attorney's connection with it.

The publisher located Matusow through his parents and asked him, over long distance telephone, to come to New York to discuss the publication of his projected book and airplane passage was arranged. Although the publisher had never before been advised of the precise type of book contemplated by Matusow, a contract for its publication was entered into between the publisher and Matusow on the day following his arrival. The publisher arranged that Matusow should occupy an apartment in New York City and dictation of the book was begun into a tape-recording machine, the publisher asking questions and Matusow answering them. The publisher maintained contact through-

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[8] The attorney who carried out the arrangements thus agreed upon was General Counsel for Mine-Mill in addition to being Attorney of Record for Appellant. He also testified at the hearing.

out this period with the officials of Mine-Mill, sometimes approaching them directly, but most often through the attorney. The union and the attorney made advances from time to time aggregating at least $3,250.00, and there is evidence that the union, including the Canadian subsidiary, agreed to purchase a total of eleven thousand five hundred [fol. 842] copies of the book at a cost of nearly Six Thousand Dollars; and the union membership of about eighty thousand became actively engaged in the sale of the book, opening up a wide field of probable income to Matusow.

On October 23rd, when the publisher approached Matusow in New Mexico, the latter had been reduced economically to the low estate of doing menial jobs calling on his erstwhile friends for small loans in order to eke out a bare existence, finally having to induce an innkeeper to trade him a few nights' lodging for his bicycle on which he was making a tour of that country. There was credible evidence that, on the night of that telephone call, Matusow flashed a roll of bills to a friend with whom he was dining, stating that he had received an advance of One Thousand Dollars from his publisher in addition to a plane ticket to New York.

During the days intervening between his arrival in New York and December 14, 1954, Matusow and the publisher had proceeded with the initial draft of his book. The publisher was in constant touch with the attorney, but Matusow did not know this. The title of the book, whose outline Matusow presented to the publisher upon his arrival, was "Blacklisting Was My Business," and the outline made no mention of appellant or of any false testimony. On December 14th, responding to a question from the publisher as reflected by the transcript of the tape-recording, Matusow dictated:

> "I knew Jencks was a Party member and I said so. I can't say here that Jencks wasn't a Party member after he signed the affidavits because I know that he [fol. 843] was. But I shouldn't have testified. That's the important thing. * * *"

Other statements appear in the same transcript showing that Matusow was beginning to shade his statements about Jencks to some extent, but he was not at that time suffi-

ciently alive to what was expected of him to alter sufficiently the statements he had consistently made in order to suit the desires of those with whom he was dealing. Under these circumstances, the publisher thereupon made known to him the attorney's connection with the enterprise and took Matusow to the attorney's office. As of that moment the tape-recording sessions were abandoned. What transpired at the attorney's office on December 14th is unknown, but Matusow did admit that he received assurance from the attorney that the Government would experience great difficulty in basing any prosecution of him on any recantation he might make, and that prosecution seemed unlikely because of the adverse effect it would have on this and other pending cases.

Matusow immediately set about to construct rapidly a chapter concerning appellant's trial and delivered it to the lawyer, who, on January 9, 1955, submitted it to the Board of Directors of Mine-Mill and upon his return to New York work was begun on the recantation affidavit. Substantially one month after the happenings of December 14, therefore, Matusow produced a draft of this chapter in his book dealing with appellant's membership in the Communist Party, each page of which the attorney required that he sign. The spontaneous statement of December 14th above [fol. 844] quoted had been transformed to read in part as follows:

> "Jencks was not alone. Others have been indicted for the same charge. Accused of being members of the Communist Party after they had signed the Non-Communist Affidavit of the Taft-Hartley. Jencks could have been a Communist Party member, yes. I had no way of knowing it. And I didn't care. Jencks had been a Communist Party member and I presumed he had submitted his resignation as others had done prior to his signing the Non-Communist Affidavit. But, to my mind at the time, a piece of paper didn't make him any less a Communist."

Followed promptly Matusow's signature to the affidavit of recantation dated January 20, 1955, and a trip by the publisher to the executive board of Mine-Mill at which he

secured approval of a cash payment of Two Thousand Dollars. The title of the book had then been changed to "False Witness." One of the sequels to the publication of the book was a report by one of the Mine-Mill officials most active in its publication to a conference of Mine-Mill Defense Fund, in which he signalled a drive to discredit all government witnesses in Communist prosecutions.

Upon the hearing Matusow gave testimony of a much stronger nature in favor of appellant than had been set forth in his affidavit or in the chapter of his book[9] dealing [fol. 846] with this case. Further, he joined in the movement to discredit government witnesses generally by delivering a number of tirades against the Department of Justice and its attorneys, extending his vilification to members of Congress and other government officials. His boldness increased as prospects became brighter for the sale of his book.[10]

(5) The cross-examination of Matusow produced discrepancies between his oral testimony and his affidavit of recantation, and he was contradicted by witnesses introduced by the Government at the hearing, particularly with respect to the events preceding his hurried trip from New Mexico to New York in response to the publisher's telephone call. Amony these were two Mormon missionaries whose testimony tended to contradict that of Matusow on vital matters, and the ticket agent at the airport, who stated that Matusow told him he was on the way back to New York to write a book and "they are not interested in the truth but as long as they will pay money for it I will write anything."

(6) The court below also had before it testimony and statements made by Matusow before and after the trial which supported his trial testimony and discounted his recantation. On three occasions before the trial he had

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[9] Chapter 16 of *False Witness* entitled "Witness For the Persecution."

[10] He made the statement, while on the stand, that he hoped to sell a million copies, it already having appeared in Poland, an Iron-Curtain country, and was being run as a serial by a French Newspaper.

testified under oath to facts which squared in the main with his testimony at the trial: before the Senate Internal Security Sub-committee holding hearings at Salt Lake City October 8, 1952, before the Federal grand jury in El Paso, [fol. 846] Texas on April 20, 1953, and before the Texas Industrial Commission at Austin, Texas on December 4, 1953. Subsequent to the testimony at the trial he swore, on July 12, 1954, before the House Committee on Un-American activities that he had not lied in the testimony given at the trial and on the occasions mentioned above. It is worthy of note that, in the hearing before the Senate Internal Security Sub-Committee, Matusow testified in the presence of appellant that appellant was a Communist Party member, and that his union, the International Union of Mine, Mill and Smelter Workers, was planning to cut off copper production for the Korean War by a strike. Appellant was asked by the Senate Committee if he denied the charges made by Matusow and appellant declined to answer, claiming his constitutional privilege against self-incrimination.

On October 22, 1954, Matusow told a representative of the press that he had never lied under oath, and he made a like statement to representatives of the Department of Justice in October, 1954.

(7) Under these circumstances the court below was justified in finding that Matusow testified truthfully at the trial, and that his recantation was false; in fact it is difficult to perceive how the court could have reached any other conclusion. Appellant relies heavily upon the decision of the District Court of the United States for the Southern District of New York in *United States* v. *Flynn, et al.*, 130 F. Supp. 412, appeal discontinued Sept. 14, 1955 on stipulation. That court rendered a lengthy opinion which we have read with care. We are not called upon to pass on the [fol. 847] decision of the fact-finder in that case. The facts attending that trial and those adduced at the hearing of the motion for a new trial were different from those here. Nor was the court faced there with the inducement to a false recantation which stands out so prominently here. The holding of the District Judge there has no tendency to persuade us that we should overturn the decision on the

facts made by the District Judge in the case before us. In any event, we are not tempted to succumb to the thesis that there is no truth because the search for it is made difficult or complex by the machinations of evil men.

(8) There is another point of difference between the situations faced respectively by the District Judge in the Flynn case and the court below in this case. In the Flynn case, Matusow's testimony was so vital and uncorroborated with respect to the two defendants granted new trials that the court felt that they would not have been convicted without it. Here the situation was quite different, the testimony of Matusow in most of its fundamental aspects being merely cumulative, and the facts being established by credible testimony from other witnesses. What he said concerning appellant's activities in the National Association of Mexican-Americans, commonly referred to as ANMA, furnishes a good illustration. Matusow's testimony at the trial had connected appellant with that organization of Mexican and American miners and had characterized the organization as Communist dominated. By degrees Matusow recanted the substance of that testimony. But other witnesses established the same facts to which Matusow had [fol. 848] testified, and which he sought to recant. Witnesses Ford and Petersen established definitely that ANMA had long been an important concentration point in the work of the Communist Party in New Mexico. Ford and Terrazas corroborated Matusow's partly recanted testimony of appellant's admitted activity in the organization, and no facet of that proof was left without convincing corroboration.

Other witnesses gave in detail the names of persons participating in the activities Matusow attributed to appellant, and none of these were used by appellant at the trial or on the hearing to challenge or refute any of this testimony. In most instances others were present when appellant made the statements ascribed to him by Matusow; and the testimony given by Matusow as to conversations between him and appellant alone dealt with situations covered by testimony of other witnesses. The burden was on appellant to bring forward witnesses to refute the otherwise undisputed testimony or at least to give a satisfactory explanation of his failure to do so.

There was ample evidence before the jury at the trial to warrant a conviction without the testimony of Matusow. We hold that, upon the whole record, it is manifest that the testimony without Matusow was so convincing that it is difficult to justify the thought that any other result could have been reached if Matusow had not been present as a witness.

(9) Appellant repeats the argument that the court below erred in refusing to require that the F.B.I. reports be brought before it, the complaint this time being based [fol. 849] largely upon the refusal of the judge to require disclosure of a report written by an agent after Matusow had expressed a desire not to testify in any future hearing of the prosecution against appellant. The request with which we are dealing was raised after Matusow had stated that he had indicated to the F.B.I. agent that his testimony was not honest.[11] That request made by appellant's attorney was not made when the testimony was given but quite a bit later. When the quoted testimony was brought out, Matusow was under cross-examination about divorce proceedings between him and his wife.

The agent gave quite a different version of what Matusow

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[11] He made two statements while under cross-examination, the former being: "I told the F.B.I. agent I didn't want to testify in the Jencks trial. I didn't feel my testimony was honest. Or, in substance, that is what I told him—I didn't want to ever testify and especially in the Jencks trial that was coming up." A little later on the same subject he stated:

> "I told the agent and he made a written notation of what I was saying about the Jencks case and I asked him if he would forward that information to Washington or to whoever was in charge of the Jencks case to inform them I didn't want to be a witness in that case. That is how it happened and he took it down and asked me to look at his note. I looked at his notes and said, 'Yes'."

id to him.[12] The situation facing the judge at the hearing
ol. 850] does not come within the holding of the Supreme
ourt in the case relied upon, *Gordon, et al., v. United*
tates, 344 U.S. 414. There appellant's conviction rested
pon the testimony of one witness alone, an accomplice who
ad entered a plea of guilty, and his sentence had been de-
erred by the trial judge, who stated to the witness that he
ould tell the Government officers all that he knew with the
bvious expectation that he might receive a "recommenda-
on for a lenient sentence or for probation". Moreover,
was established without contradiction that the witness
ad given the F.B.I. a statement in direct contradiction to
ne one he was then making. On the basis of rejection of
ne request for that statement, plus the error committed
y the judge while deferring the sentence, the Supreme
ourt held that a conviction should be reversed. But the
asis of the holding on this phase of the case is thus stated
y the Supreme Court: "By proper cross-examination, de-

[12] "Mr. Matusow came into the resident agency . . .
nd indicated he was about to accept work at a radio station,
XTRC, and that he had been having marital trouble, that
e was in Santa Fe at that time with his divorced wife with
he anticipation of marrying again, bringing about a recon-
iliation. He said he would like to be spared the necessity
f testifying again, because the publicity that he had re-
eived seemed to work against his marital relations, he
scribed it to the publicity, and he desired that officials of
he Government be notified that he would like to be spared
he necessity of testifying again."

When asked whether Matusow indicated that he was not
eing honest in any of the testimony or that he had given
ny false testimony at any time or place, the agent answered
ategorically, "He did, at no time, indicate to me that he
ad testified falsely or dishonestly".

Moreover, other testimony given by Matusow gave sub-
tance to the assumption that what he meant when he stated
o the agent that he did not feel that his testimony was
onest, was that it was not honest for him to associate
ntimately with appellant and then testify to what tran-
pired between the two.

fense counsel laid a foundation for his demand by showing that the documents were in existence, were in possession of the Government, were made by the Government's witness under examination, were contradictory of his present testimony, and that the contradiction was as to relevant, important and material matters which directly bore on the main issue being tried". (P. 418)

The situation with which the court below was dealing was not like the one described in this quotation. The vague [fol. 851] hint of dishonesty was supported only by Matusow's statement, and his testimony was directly contradicted by the F.B.I. agent. The court below was not forced to accept Matusow's statement, but was justified in accepting the contradictory statement of the agent.[13] The point has no more validity here than it had when raised at the trial.

(10) The Government is frequently compelled to look to the criminal element including accomplices for its witnesses. The enforcement of the criminal laws would be rendered impotent if convictions should be set aside merely because one of such witnesses essays to repudiate his testimony when it seems profitable to do so. Particularly is this true here where the recantation was so completely under the sponsorship and tutelage of appellant and his agents. Such a shackeling of law enforcement cannot be tolerated if justice is to be preserved and organized society is to be per-

[13] Moreover, Matusow's statement was not that of a witness against appellant developed upon cross-examination, but was the statement of appellant's witness seeking to bolster testimony then being given. What we said in Shelton v. United States, 5 Cir., 1953, 205 Fed. 806, 814-5, applying the rule of Gordon v. United States, supra, applies here: "Unfortunately for appellant, he does not claim * * * that Reid's statement of May 1, 1952 conflicted with the statement made upon the stand. On the contrary, the record shows that the defendant claimed only that the statement which was in substance the same that Reid was making on the stand was in contradiction of earlier oral statements made by him or his earlier action in not incriminating the defendant * * *."

mitted to compete on equal terms with those who would destroy it.

[fol. 852] The action of the court below in denying the motion for a new trial was right and its judgment is

Affirmed.

[fol. 853] IN UNITED STATES COURT OF APPEALS

No. 15557

CLINTON E. JENCKS

versus

UNITED STATES OF AMERICA

JUDGMENT—October 26, 1955

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court denying the motion for a new trial in this cause be, and the same is hereby, affirmed.

[fols. 854-855] PETITION FOR REHEARING—Covering 14 Pages Filed Omitted from This Print. It Was Denied, and Nothing More By Order.

[fols. 856-859] IN UNITED STATES COURT OF APPEALS

ORDER DENYING REHEARING—December 1, 1955

[Title omitted]

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 860] Clerk's Certificate to foregoing transcript omitted in printing.